

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
Sherman Division

ED BUTOWSKY, in his Individual
And Professional Capacities

Plaintiff,

v.

DAVID FOLKENFLIK
NATIONAL PUBLIC RADIO, INC.
EDITH CHAPIN
LESLIE COOK

-and-

PALLAVI GOGOI

Defendants.

Case No. 4:18-cv-442-ALM

**TRIAL BY JURY
IS DEMANDED**

AMENDED COMPLAINT

Plaintiff, Ed Butowsky, in his personal and professional capacities, by counsel, pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure (the “Rules”), files the following Amended Complaint against Defendants, David Folkenflik (“Folkenflik”), National Public radio, Inc. (“NPR”), Edith Chapin (“Chapin”), Leslie Cook (“Cook”), and Pallavi Gogoi (“Gogoi”), jointly and severally.

Plaintiff seeks (a) compensatory damages and punitive damages in a sum not less than **\$57,000,000.00**, (b) prejudgment interest on the principal sum awarded by the Jury from August 1, 2017 to the date of Judgment at the rate of five percent (5%) per

year, and (c) costs – arising out of the Defendants’ defamation *per se*, business disparagement and civil conspiracy.

I. INTRODUCTION



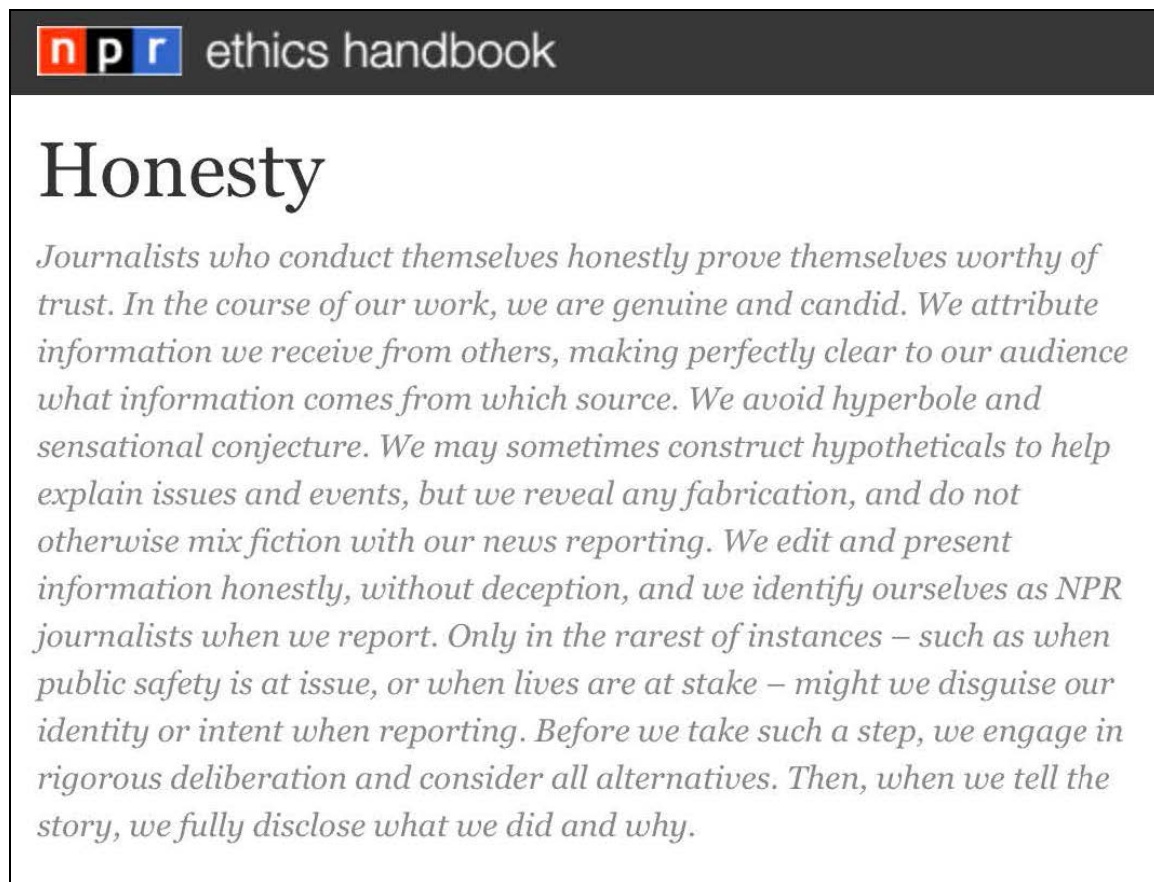
1. This is a case about collusion between a media correspondent and a lawyer. This case involves misconduct by the unethical and reckless journalist, who was spoon-fed a false narrative about President Trump and Fox News with instructions to leak the fake story online and in social media in the early morning hours of August 1, 2017.

2. The four (4) foundational principles of ethical journalism are:

- Seek Truth and Report It;
- Minimize Harm;
- Act Independently; and
- Be Accountable and Transparent.

[<https://www.spj.org/pdf/spj-code-of-ethics.pdf>; see id., <http://asne.org/resources-ethics-wapo>; <http://asne.org/resources-ethics-wsj>; <http://asne.org/resources-ethics-nyinteg>; <http://asne.org/resources-ethics-sananton>; <http://asne.org/resources-ethics-dallas>].

3. NPR keeps and maintains an “ethics handbook”, which states that NPR’s “purpose is to pursue the truth. Diligent verification is critical.” NPR publicly represents that its goal is to “tell the truest story possible”. The NPR ethics handbook emphasizes:



NPR admits that “errors of omission and partial truths can inflict great damage”.

[<http://ethics.npr.org/>].

4. The evidence in this case demonstrates that Folkenflik – a journalist renowned for his bias against the Fox News Network (“Fox”) – knowingly, intentionally and recklessly violated every principle of ethical journalism when, acting in concert and

conspiracy with Douglas H. Wigdor (“Wigdor”), he published and republished false and defamatory statements that harmed an innocent citizen, Plaintiff, Ed Butowsky.

5. Between August 1, 2017 and March 14, 2018, Folkenflik and NPR published multiple online articles and republished those articles to new target audiences via Twitter – articles and tweets in which they made and repeated false and defamatory statements of and concerning Butowsky, including:

AUGUST 1, 2017

“Behind Fox News’ Baseless Seth Rich Story: The Untold Tale”

<https://www.npr.org/2017/08/01/540783715/lawsuit-alleges-fox-news-and-trump-supporter-created-fake-news-story>

- Fox News’ May 16, 2017 story, “*Seth Rich, slain DNC staffer, had contact with WikiLeaks, say multiple sources*”, was “baseless”;
- The Fox News story was a “**fake news story**” (emphasis in original);
- The Fox News story was a “deceptive story”;
- “Butowsky presented himself as a good Samaritan who came across a sliver of information about Seth Rich’s death and shared it with the Riches”;
- Wheeler did “not make great headway” in his investigation of the murder of Seth Rich.
- “The FBI informs Butowsky, Wheeler and Zimmerman that the agency is not assisting the Washington, D.C., police on the investigation – undercutting claims about an FBI report.”
- “Zimmerman’s online story ... cites Wheeler, incorporating two key quotations from Wheeler that do not appear on video. In each, the private investigator seemingly takes ownership of the accusations”;
- “Despite his misgivings, Wheeler plays along” with the fake news promoted by Butowsky and Zimmerman.

AUGUST 7, 2017

“David Folkenflik: ‘Very Hard to Rule Out’ White House Involvement in Seth Rich Conspiracy”

<https://www.mediaite.com/online/david-folkenflik-very-hard-to-rule-out-white-house-involvement-in-seth-rich-conspiracy/>

- “Sadly, the way in which this White House has operated has forced people to go out and to say things that are almost certainly knowingly untrue, and that are often proven certainly to be untrue”;
- “[C]ollaboration” between Butowsky and the President “is still a plausible assumption with the current evidence”;
- “Butowsky’s narrative is ‘inconsistent’.

AUGUST 7, 2017

“Fox News’ Seth Rich Story Echoes Previous Problems For Owner Rupert Murdoch”

<https://www.npr.org/2017/08/07/542087047/fox-news-seth-rich-story-echoes-previous-problems-for-owner-rupert-murdoch>

- “Revelations about Fox News’ role in concocting a baseless story on the death of a young Democratic staffer has problematic echoes for the network’s controlling owner, Rupert Murdoch”.
- A “new journalistic scandal involving Murdoch's Fox News channel and a murder in the U.S. could damage his prospects in London once again”;
- “Murdoch’s Fox News concocted a story on the killing of a young Democratic aide in order to help President Trump”.

AUGUST 16, 2017

“The Man Behind The Scenes In Fox News’ Discredited Seth Rich Story”

<https://www.npr.org/2017/08/16/543830392/the-role-of-ed-butowsky-in-advancing-retracted-seth-rich-story>

- Butowsky was “The Man Behind The Scenes In Fox News’ Discredited Seth Rich Story”;
- “Until now, Ed Butowsky has enjoyed edging close to the limelight — an investment adviser who has pursued celebrity clients, his profile burnished through appearances on Fox News and its sister channel Fox Business Network.”

- “Butowsky displays no curiosity about the way Fox’s reporting and his activities affected the very people [the Rich Family] he says he sought to help”.

AUGUST 16, 2017 – Twitter

<https://twitter.com/davidfolkenflik/status/897959792714579968>

- “My deep dive on Ed Butowsky, the financial talking head who helped to propel Fox News’ discredited Seth Rich story”.
- “Ed Butowsky is the money manager who played a key role in a since-retracted Fox News expose about the murder of a young Democratic Party aide”.

SEPTEMBER 15, 2017

“No Apology, No Explanation: Fox News And The Seth Rich Story”

<https://www.npr.org/2017/09/15/551163406/fox-news-has-yet-to-explain-what-wrong-in-seth-rich-story>

- “Fox News was compelled to retract the story, which involved presidential politics, international intrigue and a man’s murder. When a story of this scale crumbles, most news organizations feel obligated to explain what happened and why. Not so far at Fox ... In the four months since its retraction, Fox News has not apologized for what it reported. Nor has it explained what went wrong”;
- **“Lesson No. 1: Investigative reports should be ironclad”** – the “Fox story revived conspiracy theories that whipped through more extreme conservative media outlets that sought to discredit growing suspicions the Russians were behind the hack of the DNC”;
- **“Lesson No. 2: Make sure your sources are saying what you think they're saying”** – “Before the story ran, Zimmerman sent Wheeler a draft with quotes she intended to attribute to him. NPR has seen a transcript of the texts from Zimmerman calling his attention to that email. But there’s zero evidence Wheeler ever said those words or gave permission for her to use them. And if Zimmerman did invent the quotes, that’s a big problem – regardless of whether Wheeler gave her the green light”;

- **Lesson No. 3: Make sure each of your sources can stand on its own** – “A Dallas investment manager and Trump supporter named Ed Butowsky helped to orchestrate the Fox News story ... Butowsky fed tips to Wheeler and Zimmerman, the Fox reporter, as he sought to link the dead man to the leaked emails instead of hackers working on behalf of the Russians. It was all part of an effort, as he confided to others in conversations captured on tape and emails, to defend President Trump, whose ties to the Russians are under federal investigation ... In a three-way taped conversation that took place a few hours after the Rich story ran, Butowsky and Zimmerman conceded Wheeler had never said what her story claimed”;
- **“And that leads us to lesson No. 4”** – Transparency and Trust - “Fox withheld Butowsky’s various roles in the story from its audiences — he blurred lines between benefactor, source, player and, possibly, even reporter”.

SEPTEMBER 19, 2017

“Fox News Fights Back On Lawsuit Filed Over Seth Rich Story”

<https://www.npr.org/2017/09/19/552133180/fox-news-fights-back-on-lawsuit-filed-over-seth-rich-story>

- Butowsky “is a Dallas investment manager and supporter of President Trump’s who worked behind the scenes to try to link Rich to the leak of the Democratic emails as a way of deflecting criticism of the president”.

MARCH 13-14, 2018 – Twitter¹

<https://twitter.com/davidfolkenflik/status/973773671121682432>

- “My story on Ed Butowsky, the Dallas investor and Trump backer who arranged for investigator Rod Wheeler to work on Rich family's behalf – but reporting secretly to him”.
- “Ed Butowsky is the money manager who played a key role in a since-retracted Fox News expose about the murder of a young Democratic Party aide”.
- “My story on Fox’s reaction to the Seth Rich story – no apology, no explanation, no known punishments. Zimmerman remains at network”.

¹ On March 13-14, 2018 – over seven (7) months after the original publications – Folkenflik and NPR republished three of the online articles to a new target audience – Folkenflik’s followers on Twitter.

6. Rather than report on a lawsuit, in his articles and tweets Folkenflik chose to attack and personally and professionally disparage Butowsky, repeatedly highlighting the fact that Butowsky was a “wealthy Dallas investor”, an “investment advisor”, “financial talking head”, “money manager”, “Dallas investment manager”, and “Dallas investor”, who lied and engaged in dishonest, deceitful, fraudulent, fake and unethical business practices. The qualities disparaged by Folkenflik – Butowsky’s veracity, honesty, integrity and ethics – are peculiarly valuable to Butowsky and necessary in his business or profession as a registered investment advisor.² Folkenflik’s false statements ascribe to Butowsky conduct, characteristics and conditions that would adversely affect his fitness for the proper conduct of his money management business and profession as a registered investment advisor. Folkenflik’s false and defamatory statements injured Butowsky in his office, profession and occupation as a “Dallas investment manager”, causing Butowsky to lose clients, lose standing in his profession, and causing a substantial disruption in Butowsky’s daily routine and a high degree of mental pain and distress.

7. Folkenflik and NPR acted with actual malice and reckless disregard for the truth. Hungry to publish a scandalous story about the President of the United States and Fox and to aid and abet Wigdor’s effort to extort money from Fox, Folkenflik failed to verify the information Wigdor secretly provided before releasing it on NPR.org, to NPR’s radio listeners via *Morning Edition*, and to millions upon millions via Twitter. In spite of serious doubts as to the veracity of his source, Folkenflik blindly accepted

² As a registered investment advisor, Butowsky is required to abide by a written code of ethics that, *inter alia*, includes standards of business conduct. [17 C.F.R. § 275.204A-1 *Investment advisor code of ethics*].

Wigdor's false statements without ever once questioning Wigdor's (and his client, Rod Wheeler's), motive to lie. Folkenflik disregarded known sources of information that flatly contradicted the false narrative peddled by Wigdor. In promoting Wigdor's story, Folkenflik misrepresented, distorted and oversimplified facts and issues. Folkenflik failed to gather, update and correct information throughout the life of his story, allowing the false narrative to build momentum and take on a life of its own. Folkenflik engaged in baseless stereotyping and allowed his (and Wigdor's) extreme bias to shape his reporting. Folkenflik published and republished the story in such a way and to such audiences and extremes as to maximize the insult, pain, humiliation and embarrassment to Ed Butowsky in both his personal and professional capacities. Folkenflik pandered to lurid curiosity about the President and fake news about "Russian collusion", rather than tell the truth.

8. The United States Supreme Court recognizes that "The right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being—a concept at the root of any decent system of ordered liberty". *Rosenblatt v. Baer*, 383 U.S. 75, 92-93 (1966). This is not a case about the First Amendment or "freedom" of the press or a critique of NPR's reporting on a lawsuit or a matter of public concern – for no man has the right to defame and disparage another.³ This is a case about Folkenflik and NPR's actual malice and reckless disregard for the truth.

³ The Supreme Court of the United States has recognized "[t]ime and again" that "false factual statements possess no First Amendment value." *United States v. Alvarez*, 132 S.Ct. 2537, 2560 (2012). Thus, any attempt by Folkenflik and NPR to hide behind the "First Amendment" is unavailing.

II. PARTIES

9. Plaintiff, Ed Butowsky (“Butowsky”), is a citizen of Texas. Butowsky is 55 years-old. He resides with his family in Plano, Texas. He has a long history of generously helping people in need. Butowsky is an internationally recognized expert in the investment wealth management industry. He has been in the financial services industry for over twenty-nine (29) years. He started his career with Morgan Stanley, where he was a Senior Vice President in private wealth management. In his eighteen (18) years with Morgan Stanley, Butowsky was the firm’s top producer nationally as well as the first advisor to surpass one billion dollars in assets under management. He was recognized as a member of both the Chairman’s Club and the Equity Club at Morgan Stanley, a distinction reserved for only the firm’s top advisors. In 2005, Butowsky launched Chapwood Investments, LLC, an Addison, Texas-based, private wealth management advisory firm focused on providing comprehensive financial counseling and investment advice to wealthy families and individuals. He was nominated as Top Financial Advisor in the World by Reuters in 2007. Through his work with professional athletes, Butowsky was prominently featured in both the ESPN Movie, *Broke* [https://www.youtube.com/watch?v=1lhmiE_Hs0I], and the blockbuster Sports Illustrated article, “*How (and Why) Athletes Go Broke*”. [<https://www.si.com/vault/2009/03/23/105789480/how-and-why-athletes-go-broke>].

10. Prior to Folkenflik and Wigdor’s publications and republications, Butowsky was a frequent guest on CNN, ABC, CBS, NBC, CNBC, Fox Business News, FOX News Channel, Bloomberg TV, and China TV. Butowsky had made hundreds of appearances on national television, and was often seen on “Varney and Co”, “Closing

Bell”, “Street Signs”, “Your World w/ Cavuto”, “America Live” with Megyn Kelly, “Willis Report”, “America’s News HQ”, “Taking Stock” with Pimm Fox, TheBlaze TV with Glenn Beck, and “Wilkow!” with Andrew Wilkow. He was also regularly heard on radio shows around the country such as “Mad Dog Radio” and “Bloomberg Radio”, discussing wealth management, and other subjects that are of interest and timely related to the finance/investments world.

11. Prior to Folkenflik and Wigdor’s global smear campaign, Butowsky enjoyed an untarnished personal and professional reputation in the community in which he lived and worked, with clients, with colleagues in business, and with his many friends. As was known and intended, Folkenflik’s defamation spread like wildfire throughout mass media, social media and over the Internet, causing Butowsky to be ostracized, causing enormous loss of business (including, without limitation, the termination and loss of Chapwood’s Investment Manager Service Agreement with Charles Schwab and loss of clients),⁴ and causing Butowsky substantial personal injury, fear, and mental and physical

⁴ The loss and damage caused to Butowsky by Folkenflik’s defamation is evidenced by the following email from one of Butowsky’s clients:

On 8/3/17, 5:29 PM, "Sally Davis" <sallyhi-d@comcast.net> wrote:

Hello Ed and Kim,

I’m really sad to write this email.

I have to let you know I asked Schwab to remove Chapwood Investments as the advisor on my Schwab Account. I will follow up with a phone call tomorrow, August 4.

I made this decision after reading news articles about Ed’s involvement with a false news story. For me, this is not a question of politics. It’s a question of ethics.

I very much appreciate all your help and guidance through the past twenty-five years or so. I’m heartbroken to end our relationship.

pain and suffering. Butowsky has received death threats to his family, damage to his home in Plano, and thousands of *ad hominem* attacks.

12. Defendant, Folkenflik, is a citizen of New York, who lives in New York City. Folkenflik is a media correspondent on NPR's Business Desk. The vast majority of Folkenflik's reporting involves Fox and stories about sexual harassment, sexual misconduct and related issues. At all times relevant to this action, Folkenflik was an employee of Defendant, NPR, Inc., acting within the scope of his employment. [<https://www.npr.org/people/4459112/david-folkenflik>].

13. Defendant, NPR, is a District of Columbia non-stock corporation with headquarters and principal places of business in Washington, D.C., California and New York. NPR describes itself as a "mission-driven, multimedia news organization and radio program producer." NPR produces news, talk, music and entertainment programs. NPR also distributes programs produced by member stations and independent producers under the NPR brand. NPR claims that it "sets the standard for trusted editorial content". NPR transacts substantial business in Texas. It maintains and operates multiple domestic bureaus in Texas and at least thirty-five-member stations in Texas. NPR.org is one of NPR's digital properties. NPR.org is an online publication that is owned and operated, upon information and belief, by NPR. [<https://www.npr.org/about-npr/192827079/overview-and-history>; <https://www.npr.org/stations/pdf/nprstations.pdf>; https://www.npr.org/about/press/NPR_Fact_Sheet.pdf]. NPR receives federal grants from the Corporation for Public Broadcasting and other federal agencies. [https://www.npr.org/about/annualreports/2017_Annual_Report.pdf]. In 2017, NPR received approximately \$2,000,000 in federal funding. NPR accepts public funding on

the condition that it will publish truthful, honest and unbiased articles and statements, and that the federal funds it receives will not be used for political purposes or to promote the private agendas of third-parties, like Wigdor.

14. Defendants, Chapin, Cook and Gogoi, are individual officers, editors, producers and publishers employed by NPR who, together with Folkenflik, created, contributed, edited, published, instigated, directed and ratified the defamation at issue in this action. A general description of each individual Defendant's position at NPR is published online [see <https://www.npr.org/series/6000/people-at-npr?typeId=1>] and on their respective public profiles published on LinkedIn.com. [See, e.g., <https://www.linkedin.com/in/edith-chapin-8911b95/>]. Chapin is the Executive Editor of NPR News, charged with overseeing all desks and reporters and setting the agenda for the entire News division. Cook is a senior business editor on NPR's Business Desk. In this role, he assigns and edits NPR business reporters, including Folkenflik, and collaborates with show producers and editors on host interviews. Gogoi is the Senior Business Editor for NPR's Business Desk. The individual NPR officers, editors, producers and publishers are citizens of the District of Columbia and New York, respectively. None of the individual NPR Defendants is a citizen of Texas.

15. NPR's reach and engagement is extensive: On air, NPR reaches 30.2 million weekly listeners through more than 1,000 public radio stations. Online, NPR.org attracts a growing audience of 36.9 million unique monthly users. [<http://nationalpublicmedia.com/npr/audience/>].

16. Wigdor lives in New York. He is a partner of Wigdor, LLP. Wigdor, LLP is a public relations firm that masquerades as a law firm. Although Wigdor is an

attorney, the clear majority of his time is spent in front of cameras or giving interviews to MSNBC, CNBC, CNN, the New York Times, Bloomberg Businessweek, and many other main stream media outlets, in which Wigdor promotes himself and his causes, especially his “crusade” against Fox. Wigdor’s war against Fox is featured front and center on Wigdor’s website and on his YouTube channel – “Wigdor LLP – Employment Lawyer NYC” – where he collects and publishes sound bites and personal praise. [\[https://www.youtube.com/channel/UCeogDStcI35nkzCJYNatVBQ\]](https://www.youtube.com/channel/UCeogDStcI35nkzCJYNatVBQ).

17. Wigdor claims to be a specialist in sexual harassment and assault cases. His website, *inter alia*, notes that he has represented “over 20 employees at Fox News in their claims of gender discrimination, race discrimination, retaliation and defamation against the network”. [\[https://www.wigdorlaw.com/portfolio/douglas-h-wigdor/\]](https://www.wigdorlaw.com/portfolio/douglas-h-wigdor/). In 2017, as part of the “Publicity” he has created for himself, Wigdor’s website represented that:

“Mr. Wigdor currently represents thirteen clients who have alleged racial discrimination against Fox. Mr. Wigdor also represents Rod Wheeler, a Fox contributor in an ‘explosive’ lawsuit alleging defamation in connection with a story published about murdered DNC staffer Seth Rich, Scottie Nell Hughes, a former Fox contributor in a lawsuit alleging retaliation after she complained of sexual assault by Fox Business host Charles Payne, and Lydia Curanaj, a Fox5 reporter in a lawsuit alleging gender and pregnancy discrimination against Fox News. The lawsuits join a succession of sexual harassment allegations made against Fox, and have been extensively reported on by both national and international media and referred to as a ‘Normandy like’ legal assault.”

[Id.].

18. Wigdor uses the press and social media as weapons. He brazenly litigates his causes outside the courtroom in the “court of public opinion” as part of a “press strategy” to intimidate and coerce settlements. As so happened in this case, Wigdor often grants in-depth access to a single reporter from a prominent news outlet, on the condition

that the story be embargoed until the day a suit is filed, when it can be set off like a firecracker.

19. This action involves a collusive arrangement and conspiracy between Folkenflik and Wigdor to publish and republish false and defamatory statements about Butowsky as part of Wigdor's effort to extort Fox. Wigdor selected Folkenflik and deliberately leaked a false narrative to Folkenflik because Wigdor knew that Folkenflik harbored bias and animus towards Fox and its Chairman, Rupert Murdoch. Wigdor correctly surmised that Folkenflik would never question or doubt Wigdor's veracity.⁵ Folkenflik gladly accepted the "scoop" from Wigdor and published fake news with reckless indifference to the consequences of his actions as a "journalist".

III. JURISDICTION AND VENUE

20. The United States District Court for the Eastern District of Texas has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 (Diversity Jurisdiction) and 28 U.S.C. § 1367 (Supplemental Jurisdiction). The parties are citizens of different States and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest, costs and fees.

21. The Defendants are subject to general and specific personal jurisdiction in Texas. They transact substantial business in Texas and committed multiple acts of defamation and intentional torts, in whole or part, in Texas. They have minimum contacts with Texas such that the exercise of personal jurisdiction over them comports

⁵ The selection of Folkenflik for leaking the false and defamatory statements was no coincidence. Wigdor knew that Folkenflik had been a vocal critic of Fox News for years, even writing a book about the network and its Chairman, Rupert Murdoch, entitled, "Murdoch's World: The Last of the Old Media Empires." [<https://www.npr.org/2013/10/21/238899506/inside-murdochs-world-a-peek-into-a-media-empire>].

with traditional notions of fair play and substantial justice and is consistent with the Due Process clause of the United States Constitution. Defendants' defamation was purposefully directed at Texas and was continuous and systematic. Butowsky's claims directly arise from and relate to Defendants' publication of false and defamatory statements in Texas. *TV Azteca v. Ruiz*, 490 S.W.3d 29 (Tex. 2016) (citing *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984) and *Calder v. Jones*, 465 U.S. 783 (1984)).

22. Venue is proper in the Sherman Division of the United States District Court for the Eastern District of Texas because Folkenflik and NPR and their agents published and republished defamatory statements to a wide audience that includes persons who reside within the Sherman Division. Folkenflik and NPR's defamation caused substantial harm to Butowsky's personal and professional reputations in Texas. A substantial part of the events giving rise to the claims stated in this action occurred in the Eastern District of Texas.

IV. STATEMENT OF MATERIAL FACTS

23. At all times relevant to this action, Folkenflik had actual knowledge that his written and oral statements about Butowsky were false. He knew Butowsky did not orchestrate and/or promote any "fake news story". He knew Butowsky did not collude with the President of the United States or with Fox to publish "fake news". Indeed, at the time he published his false statements, Folkenflik had not seen any evidence that the President even knew Butowsky.

24. In his reporting, Folkenflik deliberately misrepresented and concealed known facts, including the fact (a) that Fox reporter, Malia Zimmerman ("Zimmerman")

had shared drafts of her article with Rod Wheeler (“Wheeler”) on May 15, 2017, and (b) Wheeler had approved the exact quotations that appeared in Zimmerman’s article.

25. Before he published his first online article on August 1, 2017 at 7:23 a.m., Folkenflik possessed information that should have caused him to disbelieve the preconceived false narrative supplied to him by Wigdor.

26. The truth was well-known to Folkenflik – not only from Wheeler’s text messages and emails (described in detail below) in Folkenflik’s possession, but from public records (videos in which Wheeler and others, including Seymour Hersh,⁶ appeared) and from other information and recordings available to Folkenflik on the Internet (all described in detail below). The true facts were also available to Folkenflik on and through the website, <http://www.debunkingrodwheelersclaims.com/> (now <http://debunkingrodwheelersclaims.net/>). Although Wigdor told Folkenflik that Fox and Butowsky had fabricated quotations that Fox and Butowsky then falsely attributed to Wheeler, Folkenflik knew (a) that Wheeler had made the statements publicly on camera on May 15, 2017 to Fox 5 DC correspondent, Marina Marraco (“Marraco”), (b) that Wheeler had confirmed the quotations three (3) times to Zimmerman on May 15, 2017 in emails and text messages, (c) that Wheeler had affirmed the substance of the quotations in interviews with Sean Hannity and Lou Dobbs on May 16, 2017, and (d) that Wheeler had actually told FetchYourNews on May 22, 2017 that Zimmerman’s story was

⁶ Seymour Hersh (“Hersh”) is a well-known journalist. Hersh first came to national prominence in 1969, when he helped expose the massacre of Vietnamese civilians in the village of My Lai. More recently, Hersh revealed the U.S. military’s torture of Iraqi prisoners at Abu Ghraib prison in 2004. In 2014, Hersh debunked Western propaganda that sought to justify a major U.S. military attack on Syria. [<http://samadamsaward.ch/seymour-hersh/>]. In 2017, Hersh supplied key information to Zimmerman concerning Seth Rich and WikiLeaks. [*See below*].

“essentially correct”. (Emphasis added). Based upon information in his possession, Folkenflik knew that his statements about Butowsky were categorically false.

27. Instead of reporting the truth, Folkenflik abandoned his ethics and journalistic standards, and went with a preconceived story – a story manufactured and supplied to him by his source – Wigdor – a source that was admittedly on a “crusade” to get Fox. Folkenflik abandoned all journalistic integrity. He failed to investigate the true facts. He relied on inherently unreliable and debunked sources, such as Wigdor’s client and source, Wheeler. Folkenflik departed from journalistic standards and repeated words and phrases that he knew were false or inherently improbable – phrases such as “Russian collusion”. Folkenflik abandoned common sense. The suggestion that the President of the United States and/or the “Russians” (Vladimir Putin) colluded with Butowsky – a person unknown to either the President or Putin and with whom neither the President nor Putin has ever communicated – is preposterous.

28. Folkenflik knew that Wigdor’s preconceived narrative was false. Folkenflik, who hated Fox and craved the notoriety of salacious “breaking news”, had a motive to publish a false narrative about Fox. In spite of known and obvious reasons to doubt the veracity of Wigdor and Wheeler, Folkenflik and NPR proceeded with the preconceived story without verification and without hesitation.

A. THE PRECONCEIVED FALSE NARRATIVE

29. As of June 2017, Wigdor had filed and/or had threatened to file numerous lawsuits against Fox, including, without limitation,

- *Ujkic v. Twenty-First Century Fox, Inc. et al.*, Case 1:16-cv-09608 (filed 12/13/2016);

- Brown et al. v. Twenty-First Century Fox, Inc. et al., Case 22446/2017E (filed 03/28/2017);
- Blanco v. Twenty-First Century Fox, Inc. et al., Case 1:17-cv-03017 (filed 04/25/-2017);
- Lee v. Twenty-First Century Fox, Inc. et al., Case 1:17-cv-03835 (filed 05/22/2017)
- Farrow v. Twenty-First Century Fox, Inc. et al., Case 1:17-cv-03836 (filed 05/22/2017)
- Hughes v. Twenty-First Century Fox, Inc. et al., Case 1:17-cv-07093 (filed 09/18/2017)
- Gollohor v. Twenty-First Century Fox, Inc. et al., Case 1:17-cv-08232 (filed 10/25/2017)

(the “Wigdor Discrimination Suits”).

30. Prior to June 23, 2017, in anticipation of a mediation of the Wigdor Discrimination Lawsuits, Wigdor prepared a draft of a complaint against Fox, Zimmerman and Butowsky.

31. Wigdor intentionally included in the draft document salacious, scandalous and impertinent allegations about the President, “fake news”, and Russian collusion. Wigdor drafted the pleading solely for its shock effect. Wigdor intended to use the draft document to extort a global settlement of the Wigdor Discrimination Suits from Fox at the mediation.

32. The draft document included the false statement stated that Zimmerman, “with knowledge and support of Butowsky, fabricated two quotations and attributed them to Mr. Wheeler:

- ‘My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks,’ said Wheeler.’

- ‘My investigation shows someone within the DC government, Democratic National Committee or Clinton team is blocking the murder investigation from going forward,’ Wheeler said. ‘That is unfortunate. Seth Rich’s murder is unsolved as a result of that.’”

33. The draft document made multiple additional false and defamatory statements of fact of and concerning Butowsky, including:

- Butowsky said the statements were falsely attributed to Wheeler because *“that is the way the President wanted the article”*.
- Zimmerman, Butowsky and Fox had created fake news to advance President Trump’s agenda.
- Butowsky and Zimmerman were not simply Good Samaritans attempting to solve a murder.⁷ Rather, they were interested in advancing a political agenda for the Trump Administration.
- Specifically, it was Butowsky and Zimmerman’s aim to have Wheeler confirm that: (i) Seth Rich was responsible for the leak of DNC emails to WikiLeaks; and (ii) Seth Rich was murdered by a Democrat operative because he leaked the emails to WikiLeaks.
- Butowsky and Zimmerman were not in this alone. Rather, they colluded with Sean Spicer, Steve Bannon⁸ and Sarah Flores to shift the blame for the DNC hacks from the Russians to Seth Rich in order to undermine reports of collusion between Russia and the Trump Administration.
- President Trump wanted Zimmerman’s article published to help lift the cloud of the Russia investigation.

⁷ Butowsky was not trying to solve the murder of Seth Rich. The Rich family engaged Wheeler – not Butowsky or Fox – to help solve the murder. Wheeler is the one who investigated the matter and came up with the theory that Seth Rich’s murder was **not the result of a botched robbery**. In one of his texts to Zimmerman, Wheeler stated that **“I’m ready to say that Seths Death was not a botched robbery and there appears to be a coverup within the D.C. Govt related to his death”**. These are Wheeler’s words. Wheeler is the one who told Fox 5 DC reporter, Marina Marraco, on camera on May 15, 2017 that **he** had sources at the FBI who said there is information that could link Seth Rich to WikiLeaks. **“Absolutely, yeah, and that’s confirmed”**. These are Wheeler’s own words.

⁸ Butowsky has not spoken with Steve Bannon in over three (3) years. Wigdor and Wheeler simply made this up to further their false narrative that the White House and the President were involved. **Folkenflik never bothered to interview Bannon.**

- Simultaneous with baseless claims of nonpartisanship to British regulators, Fox was contriving with Butowsky and members of the Trump Administration to publish and disseminate fake news to affect politics in America.
- Because of Fox and Butowsky's "devious scheming" British regulators have yet to provide a green light to Fox for the Sky takeover bid, and many U.K. politicians question whether Fox is capable of news dissemination in a fair and neutral manner.
- In falsely quoting Wheeler, Butowsky and Zimmerman attempted – through the publication of fake news – to accomplish what they had set out to do from the start: "solve the problem about Russians are the ones that gave the emails" and establish that "there was no collusion like trump with the Russians."
- Butowsky planned to extort Seymour Hersh in an effort to save the May 16, 2017 Seth Rich story.
- Wheeler had to backtrack on his statements to Zimmerman because he never made the statements to begin with.

34. During the last week of July 2017 – after Fox refused to accede to Wigdor's outrageous demands and the mediation failed – Wigdor secretly met with Folkenflik to discuss publication of the scandalous false narrative about Butowsky.

35. **Prior to commencement of any judicial proceeding,** Folkenflik agreed to act in concert with Wigdor and to serve as Wigdor's firecracker to publish the false narrative about Butowsky online and via Twitter. Folkenflik agreed to put the entire weight of the "National Public Radio" behind Wigdor false statements.

36. In the days prior to August 1, 2017, Folkenflik wrote his first story about Butowsky (the August 1, 2017 article above). After writing the story, Folkenflik called Butowsky. Butowsky was at the dentist sitting in a chair about to be put under to have his wisdom teeth removed. Butowsky got up from the dentist's chair, went to hallway and called Folkenflik. Butowsky asked Folkenflik how long he had been working on the

story. Folkenflik replied, “about 4 to 5 days.” Butowsky was aware of the tactic of some reporters to build up a story and then just simply asked for a comment. That is what Folkenflik was doing: ambushing Butowsky. Butowsky informed Folkenflik that none of the accusations about collusion or about Butowsky’s involvement in and with the fake news being peddled by Folkenflik and Wigdor was true. Butowsky told Folkenflik that he had never met the President; that he did not create or promote any fake stories; that everything Folkenflik had been told by Wigdor was a lie; and Butowsky could prove it. Butowsky sent Folkenflik proof that Wheeler wrote the quotes himself. Folkenflik ignored everything Butowsky said and everything Butowsky sent him. Folkenflik had no interest in the truth. Days later, Folkenflik call Butowsky again and said he was doing a “follow up” story. Once again, Folkenflik did not listen to a thing Butowsky said. Once again, as was the case with the first call, Folkenflik had already made up his mind about what he was writing before even talking to Butowsky.

B. FOLKENFLIK PUBLISHED THE PRECONCEIVED FALSE NARRATIVE

37. At 7:23 a.m. on August 1, 2017 – before any courts were open – Folkenflik published his first online article about Butowsky, “Behind Fox News' Baseless Seth Rich Story: The Untold Tale”. [<https://www.npr.org/2017/08/01/540783715/lawsuit-alleges-fox-news-and-trump-supporter-created-fake-news-story>] (the “First Folkenflik Article”). The First Folkenflik Article appears on NPR.org as follows:



38. Folkenflik's August 1, 2017 Article makes and republishes a number of false and defamatory statements about Butowsky, including:

- Fox News' May 16, 2017 story, entitled "*Seth Rich, slain DNC staffer, had contact with WikiLeaks, say multiple sources*", was "baseless";
- Fox and Butowsky "worked in concert under the watchful eye of the White House to concoct a story" about the death of Seth Rich;
- The Fox News story was a "fake news story";
- The Fox News story was a "deceptive story";
- Wheeler did "not make great headway" in his investigation of the murder of Seth Rich.⁹ "The FBI informs Butowsky,¹⁰ Wheeler and Zimmerman that the agency is not assisting the Washington, D.C., police on the investigation – undercutting claims about an FBI report."

⁹ In making this statement, Folkenflik intentional and recklessly disregarded Wheeler's texts to Butowsky and Zimmerman. Folkenflik knew that Wheeler claimed he had, in fact, made great headway in his murder investigation. Wheeler expressly represented that it was not a botched robbery, that there was a "cover-up" in the DC Government, and that the Democratic National Committee (the "DNC") and Aaron Rich, in fact, were blocking the investigation.

¹⁰ Folkenflik knew that the FBI did not inform Butowsky that the agency was not assisting the DC police. Folkenflik also knew from an audio recording published on July 11, 2017 that there was an FBI Report and that the FBI Report confirmed that Seth Rich made contact with WikiLeaks in the "late spring", "early summer" of 2016, offered an extensive sample of emails from the DNC, and said "I want money". [<https://twitter.com/wikileaks/status/892510925244203008?lang=en> (Audio-tape of statement from Seymour Hersh); <https://www.youtube.com/watch?v=giuZdBAXVh0> (Audio at 4:02)].

- On May 11, 2017, Fox News reporter, Malia Zimmerman, “sends Wheeler a draft of her story ... It includes no quotes from Wheeler”;¹¹
- “Zimmerman’s online story ... cites Wheeler, incorporating two key quotations from Wheeler that do not appear on video. In each, the private investigator seemingly takes ownership of the accusations”;
- “Despite his misgivings,¹² Wheeler plays along” with the fake news promoted by Butowsky and Zimmerman.

39. In furtherance of the conspiracy and in support of the preconceived storyline, the First Folkenflik Article quoted and republished the following false and defamatory statement by Wigdor about “wealthy Dallas investor” Butowsky:

"Rod Wheeler unfortunately was used as a pawn by Ed Butowsky, Fox News and the Trump administration to try and steer away the attention that was being given about the Russian hacking of the DNC emails," says Douglas Wigdor, Wheeler's lawyer.

¹¹ This is a half-truth – a fraudulent misrepresentation of the facts. Folkenflik intentionally omitted the fact that Zimmerman sent Wheeler ***three (3)*** drafts of her story on May 15, 2017 – the day before the Fox News story ran – that contained the exact same quotations that Wigdor and Wheeler would claim that Fox and Butowsky had made up out of whole cloth. In support of his preconceived storyline, Folkenflik chose to publish an Article that was laden with half-truths and intentionally misleading.

¹² Prior to and through publication of Zimmerman’s article on May 16, 2017, Wheeler expressed no “misgivings” at all and he did not “play along” with anything. In fact, he voluntarily offered Zimmerman quotations. Wheeler approved the quotations in writing. As was fully disclosed in and by public record available to Folkenflik, and, upon information and belief, reviewed by Folkenflik and/or his editors and publishers, Wheeler only back-tracked on his quotations ***after being threatened with litigation*** by the Rich family. Folkenflik intentionally misrepresented and distorted the truth in order to support the scandalous preconceived story about the President, Fox and Butowsky.

C. THE BREADTH OF PUBLICATION AND REPUBLICATION OF THE FALSE NARRATIVE IS LIKE NOTHING EVER SEEN BEFORE

40. The First Folkenflik Article was viewed by millions of subscribers to NPR.org. [See https://www.npr.org/about/press/NPR_Fact_Sheet.pdf (The total number of monthly unique visitors to NPR.org is 36.8 million. Monthly visits to NPR Digital Properties, including NPR.org and NPR apps exceeds 114.4 million)].

41. The First Folkenflik Article, including the false narrative and preconceived defamatory statements fed to Folkenflik by Wigdor, was republished over and over, hundreds of times, with no fact-checking whatsoever, by other main stream and alternative media outlets and online newspaper publishers. [See, e.g.,

<https://www.mediaite.com/online/fox-news-published-fabricated-quotes-in-seth-rich-conspiracy-according-to-lawsuit/>;

<http://kut.org/post/behind-fox-news-baseless-seth-rich-story-untold-tale>;

<http://www.wbur.org/npr/540783715/lawsuit-alleges-fox-news-and-trump-supporter-created-fake-news-story>;

<http://keranews.org/post/behind-fox-news-baseless-seth-rich-story-untold-tale>;

<https://ww2.kqed.org/forum/2017/08/02/lawsuit-claims-white-house-involvement-in-discredited-fox-news-story/>;

<http://boisestatepublicradio.org/post/lawsuit-alleges-fox-news-and-trump-supporter-created-fake-news-story#stream/0>;

<https://www.opb.org/news/article/npr-behind-fox-news-baseless-seth-rich-story-the-untold-tale/>;

<http://kzyx.org/post/behind-fox-news-baseless-seth-rich-story-untold-tale#stream/0>;

<http://www.wvia.org/blogs/npr-news/lawsuit-alleges-fox-news-and-trump-supporter-created-fake-news-story/>;

<http://www.cpr.org/news/npr-story/behind-fox-news-baseless-seth-rich-story-the-untold-tale/>;

<http://wglr.org/post/lawsuit-alleges-fox-news-and-trump-supporter-created-fake-news-story#stream/0/>;

<https://wfpl.org/behind-fox-news-baseless-seth-rich-story-the-untold-tale/>;

<https://www.wmfe.org/behind-fox-news-baseless-seth-rich-story-the-untold-tale/76249/>;

https://news.wbhm.org/npr_story_post/2017/behind-fox-news-baseless-seth-rich-story-the-untold-tale/;

<https://www.hollywoodreporter.com/thr-esq/fox-accused-lawsuit-publishing-fake-news-at-donald-trumps-behest-1025708/>;

https://www.reddit.com/r/washingtondc/comments/6qw5z6/from_npr_behind_fox_news_baseless_seth_rich_story/?st=jc3nc6qp&sh=f8c35be4/;

<https://newrepublic.com/article/144200/meet-reporter-driving-fox-newss-biggest-craziest-stories/>;

<https://www.memeorandum.com/170801/p30#a170801p30/>;

<https://www.si.com/tech-media/2017/12/10/best-journalism-writing-reporting-2017-media-circus/>;

<http://es.redskins.com/topic/414681-npr-behind-fox-news-baseless-seth-rich-story-the-untold-tale/>;

<https://thinklab.com/content/510254/>;

<https://muckrack.com/davidfolkenflik/articles;>

https://www.huffingtonpost.com/entry/fox-news-white-house-seth-rich_us_59809958e4b0d6e28a10cb6e;

<https://mediaequalizer.com/brian-maloney/2017/08/cnn-gleefully-exploits-bizarre-lawsuit-filed-against-fox-news;>

<https://www.mediamatters.org/video/2017/08/01/CNNs-Brian-Stelter-explains-how-new-Seth-Rich-report-shows-the-connections-between-Fox-and/217471>]. Mediaite called the Folkenflik article a “bombshell NPR report”:



42. In addition to the online Article, NPR simultaneously broadcast and republished Folkenflik and Wigdor’s false and defamatory statements in a different format and to a new target – to NPR’s radio audience on *Morning Edition*.

43. The NPR radio broadcast was heard by millions of people across the Country. [See https://www.npr.org/about/press/NPR_Fact_Sheet.pdf (Weekly Listeners

for all NPR Stations is 37.7 million. Weekly Listeners for NPR Programming and Newscasts is 30.2 million)].

D. FOLKENFLIK USED TWITTER TO AMPLIFY THE DEFAMATION

44. At the same time the First Folkenflik Article was published online and broadcast live on NPR Radio, Folkenflik republished the false and defamatory statements to yet another new target audience – **his 75,100 followers on Twitter**.

45. Folkenflik's August 1, 2017 tweet states:



46. Folkenflik's tweet, with the attached Article, was retweeted 5,220 times and was liked 7,124 times on August 1, 2017 alone.

47. The First Folkenflik Article was republished on Twitter millions of times to Butowsky's detriment. On August 1, 2017, *prior to 12:00 p.m. Noon (EST) alone*, the Article was tweeted (*i.e.* published) by the following persons and many others:

- *NPR Politics* – 2,930,748 followers



- *audie cornish* (Host of NPR's All Things Considered) – 120,241 followers
- *Donna Brazile* – 657,492 followers
- *Muckmaker* – 67,438 followers
- *Puppymnkey* – 142,686 followers
- *Michael Weiss* (Senior Editor for the Daily Beast) – 103,206 followers

- Andy Kroll (Reporter for Mother Jones) – **16,921 followers**
- Zeke Miller (AP, BuzzFeed, Etc.) – **206,497 followers**
- Caroline O (Shareblue Media) – **311,000 followers**. “Caroline O”,

writer/editor for anti-Trump “media” outlet, Shareblue Media,¹³ like most others, believed and repeated the false narrative peddled by Folkenflik and Wigdor:



48. One of the persons who republished (*i.e.*, retweeted) Folkenflik’s tweet was Brian Stelter (“Stelter”), host of CNN’s @ReliableSources and senior media

¹³ Shareblue Media is a progressive news website owned by political activist, David Brock (“Brock”). Brock also operates Media Matters for America, an organization that publishes misinformation for the DNC.

correspondent for CNN. Stelter had **552,000 followers on Twitter** as of August 1, 2017.

Stelter retweeted the First Folkenflik Article to his 552,000 followers, stating:



49. Donna Brazile – former Chair of the DNC – had **657,500 Twitter followers** on August 1, 2017:

Donna Brazile 

@donnabrazile

Fellow, Shorenstein Center, Harvard's Kennedy School. Former Chair,
Democratic National Committee (DNC).

📍 Washington, DC [🌐 donnabrazile.com](https://donnabrazile.com)

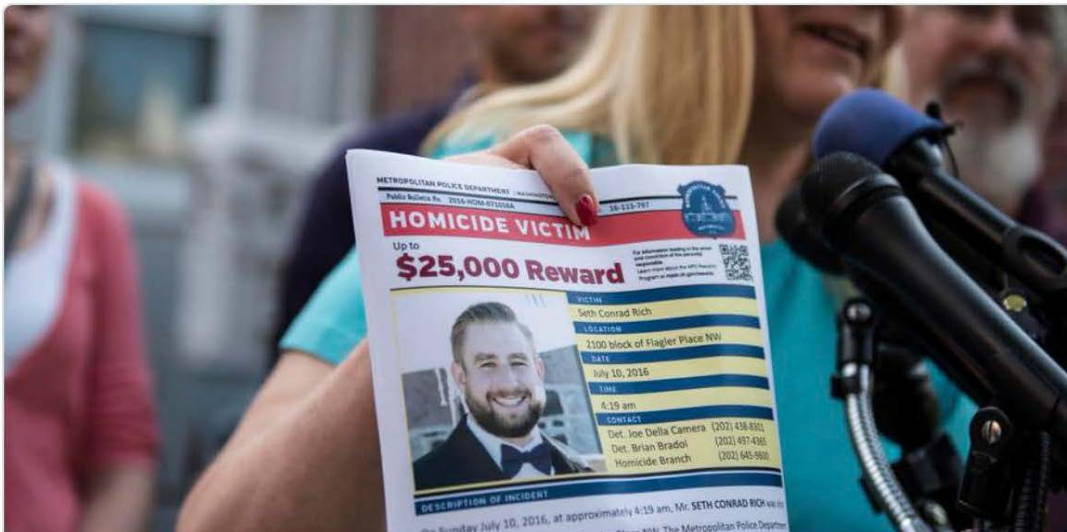
3,662 Following **657,502** Followers

Ms. Brazile republished the First Folkenflik Article to her 657,500 followers, adding the following comments:

**Donna Brazile** 

@donnabrazile

Behind Fox News' Baseless Seth Rich Story: The Untold Tale n.pr/2uUawhq. Seth was a good soul and look at this shameful act.



Behind Fox News' Baseless Seth Rich Story: The Untold Tale
npr.org

9:20 AM · Aug 1, 2017

50. Brad Bauman (“Bauman”) – a consultant and spokesperson assigned to the Rich family by the DNC – republished the First Folkenflik Article to his **3,127 Twitter followers**, feigning that the Article left him “speechless”:



51. One of the broadest republications of the Folkenflik Article occurred when “Muckmaker” tweeted the Article to his **67,000 followers**:



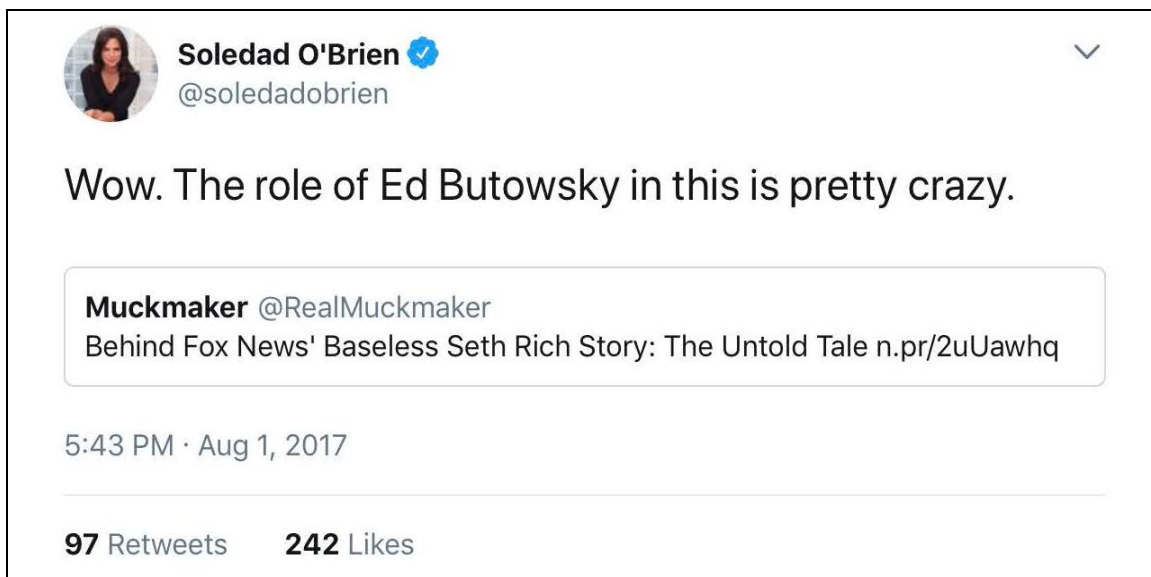
Muckmaker republished the First Folkenflik Article multiple times on August 1, 2017, including the following:



52. One of Muckmaker's followers is Soledad O'Brien ("O'Brien"), the CEO of Starfish Media Group ("SMG"). SMG claims to be a multi-platform media production and distribution company, dedicated to uncovering and investigating empowering stories that look at the often-divisive issues of race, class, wealth, poverty, and opportunity through personal narratives. [<https://www.starfishmediagroup.com/>]. O'Brien had **796,570 Twitter followers** on August 1, 2017:



Within minutes of receiving Muckmaker's tweet at 5:29 p.m., and without conducting any due diligence or fact-checking, O'Brien republished Muckmaker's tweet, making specific mention of Butowsky's "role" in the promotion of the "baseless" story:



O'Brien blindly accepted Folkenflik's representations as if they were true. O'Brien's reaction to Folkenflik's false statements typifies the impact the false statements about Butowsky had on most readers.

53. On August 1, 2017, Wigdor, acting in concert with Folkenflik, retweeted (republished) Folkenflik's tweet and Stelter's tweet to Wigdor's 400 followers. Wigdor's retweets were then retweeted and liked thousands of times, *e.g.*:



54. In addition to Twitter, Wigdor republished the First Folkenflik Article to his 112 public Facebook followers. [<https://www.facebook.com/WigdorLaw/>]. Publication of the article made it accessible by all 2 Billion+ Facebook users. Wigdor's Facebook posts were "liked" and "shared" by multiple third-parties. Wigdor even thanked "Super Lawyers" for highlighting his cause and republishing his false and defamatory statements on Super Lawyers' Facebook page:

The screenshot shows a Facebook profile for Wigdor LLP (@WigdorLaw). The profile picture is a man in a suit. The left sidebar shows navigation options: Home, About, Photos, Videos, Posts, and Community, with a 'Create a Page' button at the bottom. The main content area shows a post from August 2, 2017, where Wigdor LLP shared a post from Super Lawyers. The shared post text reads: 'Thank you Super Lawyers for highlighting our case on your Facebook page!'. Below this is the original post from Super Lawyers, dated August 2, 2017, which says: 'Rod Wheeler, a Fox News contributor and private detective, is suing the network, alleging racial discrimination and defamation. His lawsuit contends that two qu...'. There is a 'See More' link. Below the text is a photograph of a woman holding a sign that reads 'HOMICIDE VICTIM' and '\$25,000 Reward' with a picture of a man. At the bottom of the post is a link to an NPR article titled 'Behind Fox News' Baseless Seth Rich Story: The Untold Tale' with a brief description: 'A lawsuit alleges the Fox News Channel worked with a wealthy Trump supporter to concoct a false report about the death of a Democratic...'. The source is listed as NPR.ORG. At the bottom of the Facebook post are 'Like', 'Comment', and 'Share' buttons.

55. After August 1, 2017, Folkenflik gave further interviews in which he continued to push the false narrative and continued to attack Butowsky. Folkenflik told *Mediaite* columnist John Ziegler that “Butowsky’s narrative is ‘inconsistent’”. Without a shred of evidence, Folkenflik also falsely stated that “collaboration” between Butowsky and the President “is still a plausible assumption with the current evidence.” [\[https://www.mediaite.com/online/david-folkenflik-very-hard-to-rule-out-white-house-involvement-in-seth-rich-conspiracy/\]](https://www.mediaite.com/online/david-folkenflik-very-hard-to-rule-out-white-house-involvement-in-seth-rich-conspiracy/).

E. FOLKENFLIK AND NPR PUBLISHED MORE FALSE STATEMENTS

56. On August 7, 2017, Folkenflik and NPR published additional false and defamatory statements about Butowsky in an article/broadcast entitled:



[\[https://www.npr.org/2017/08/07/542087047/fox-news-seth-rich-story-echoes-previous-problems-for-owner-rupert-murdoch\]](https://www.npr.org/2017/08/07/542087047/fox-news-seth-rich-story-echoes-previous-problems-for-owner-rupert-murdoch) (the “Second Folkenflik Article”)].

57. The Second Folkenflik Article/broadcast contained the following false statements:

- “Revelations about Fox News’ role in concocting a baseless story on the death of a young Democratic staffer has problematic echoes for the network’s controlling owner, Rupert Murdoch”;
- Fox was involved in a “journalistic scandal” over the Seth Rich story;

- Fox “concocted” the story “in order to help President Trump”.¹⁴

58. On August 16, 2017, Folkenflik, continuing to act in concert with Wigdor who was on a media blitzkrieg of his own, published a third online article with a photograph of Butowsky beneath the caption (the “Third Folkenflik Article”):



[\[https://www.npr.org/2017/08/16/543830392/the-role-of-ed-butowsky-in-advancing-retracted-seth-rich-story\]](https://www.npr.org/2017/08/16/543830392/the-role-of-ed-butowsky-in-advancing-retracted-seth-rich-story).

¹⁴ Read together with the First Folkenflik Article and the statements to *Mediaite*, the overall tenor and context of Folkenflik’s statements, the “gist”, was that Butowsky lied, was dishonest, aided, abetted and actively participated in a fraudulent journalistic scandal.

59. The Third Folkenflik Article made specific reference to Butowsky's status as an "investment advisor" and contained the following false statements:

- Ed Butowsky was the "Man Behind The Scenes In Fox News' Discredited¹⁵ Seth Rich Story";
- "Butowsky displays no curiosity about the way Fox's reporting and his activities affected the very people [the Rich Family] he says he sought to help."

60. On August 16, 2017, Folkenflik republished the Third Folkenflik Article on Twitter. [see, e.g., <https://twitter.com/davidfolkenflik/status/897959792714579968>]. Folkenflik's tweet stated, "My deep dive on Ed Butowsky, the financial talking head who helped to propel Fox News' discredited Seth Rich story". Folkenflik added the following false statement beneath the picture of Butowsky, "Ed Butowsky is the money manager who played a key role in a since-retracted Fox News expose about the murder of a young Democratic Party aide".

61. On September 15, 2017, Folkenflik and NPR published yet another article about Butowsky (the "Fourth Folkenflik Article"), entitled:



¹⁵ In truth, the Fox News story has never been discredited, except because of Folkenflik's false reporting and Wigdor and Wheeler's baseless claims on television. The First Folkenflik's August 16 Article creates the false impression that Butowsky has no compassion, sympathy or understanding, indeed Folkenflik implies that Butowsky does not care whether his "activities" affected the Rich family. This imputes to Butowsky an ill-will and spite towards the Rich family that is patently false.

[<https://www.npr.org/2017/09/15/551163406/fox-news-has-yet-to-explain-what-what-wrong-in-seth-rich-story>].

62. The Fourth Folkenflik Article makes the following false statements:

- “Fox News was compelled to retract the story,¹⁶ which involved presidential politics, international intrigue and a man’s murder. When a story of this scale crumbles, most news organizations feel obligated to explain what happened and why. Not so far at Fox ... In the four months since its retraction, Fox News has not apologized for what it reported. Nor has it explained what went wrong”.

- **“Lesson No. 1: Investigative reports should be ironclad”** – the “Fox story revived conspiracy theories that whipped through more extreme conservative media outlets that sought to discredit growing suspicions the Russians were behind the hack of the DNC”;

- **“Lesson No. 2: Make sure your sources are saying what you think they’re saying”** – “Before the story ran, Zimmerman sent Wheeler a draft with quotes she intended to attribute to him. NPR has seen a transcript of the texts from Zimmerman calling his attention to that email. But there’s zero evidence Wheeler ever said those words or gave permission¹⁷ for her to use them. And if Zimmerman did invent the quotes, that’s a big problem – regardless of whether Wheeler gave her the green light”;

¹⁶ Fox was not “compelled” to retract the story. The story never “crumble[d]”. Nothing “went wrong”. These intentionally false statements typify Folkenflik’s unethical and misleading reports.

¹⁷ The truth is that Wheeler read each of the three (3) drafts of Zimmerman’s articles that were emailed to him on May 15, 2017, and, in fact, he did approve the quotes. Zimmerman did not “invent” anything and did not “lead” Wheeler in any way. Folkenflik lied.

- **Lesson No. 3: Make sure each of your sources can stand on its own” –**

“A Dallas investment manager and Trump supporter named Ed Butowsky helped to orchestrate the Fox News story ... Butowsky fed tips¹⁸ to Wheeler and Zimmerman, the Fox reporter, as he sought to link the dead man to the leaked emails instead of hackers working on behalf of the Russians. It was all part of an effort, as he confided to others in conversations captured on tape and emails, to defend President Trump, whose ties to the Russians are under federal investigation ... In a three-way taped conversation that took place a few hours after the Rich story ran, Butowsky and Zimmerman conceded Wheeler had never said what her story claimed”;

- **“And that leads us to lesson No. 4” – Transparency and Trust - “Fox withheld Butowsky’s various roles in the story from its audiences — he blurred lines between benefactor, source, player and, possibly, even reporter”.**

63. On September 19, 2017, Folkenflik, continuing to act in concert with Wigdor to promote the false narrative, published yet another online article about Butowsky (the “Fifth Folkenflik Article”), in which Folkenflik repeated the false and defamatory statement that Butowsky “is a Dallas investment manager and supporter of President Trump’s who worked behind the scenes to try to link Rich to the leak of the Democratic emails as a way of deflecting criticism of the president”.
[\[https://www.npr.org/2017/09/19/552133180/fox-news-fights-back-on-lawsuit-filed-over-seth-rich-story\]](https://www.npr.org/2017/09/19/552133180/fox-news-fights-back-on-lawsuit-filed-over-seth-rich-story).

64. In March 2018, Folkenflik decided to republish the First Folkenflik Article, the Third Folkenflik Article and the Fourth Folkenflik Article on Twitter.

¹⁸ These are categorically false statements for which Folkenflik had no evidentiary support.

[<https://twitter.com/davidfolkenflik/status/973773671121682432>]. Folkenflik's tweets contained the following false and defamatory statements:

- “My story on Ed Butowsky, the Dallas investor and Trump backer who arranged for investigator Rod Wheeler to work on Rich family's behalf – but reporting secretly to him”.
- “Ed Butowsky is the money manager who played a key role in a since-retracted Fox News expose about the murder of a young Democratic Party aide”.
- “My story on Fox's reaction to the Seth Rich story – no apology, no explanation, no known punishments. Zimmerman remains at network”.

65. Folkenflik's false and defamatory statements – in articles and via Twitter and on Facebook – published to millions and millions of people, caused substantial harm, actual damages and injury to Butowsky. Butowsky's name and reputation have been globally impugned because of Folkenflik and NPR's reckless conduct.

66. Through millions upon millions upon millions of publications and republications, tweets and retweets, posts, likes and shares, Butowsky has suffered egregious insult, shame, humiliation and embarrassment.

F. FOLKENFLIK AND NPR KNEW THEIR STATEMENTS WERE FALSE

67. This case involves the lowest form of “fake news” and the laziest and most unscrupulous and unethical journalistic practices exhibited in the new social media era.

1. Folkenflik Misrepresented Butowsky's Involvement

68. Before he wrote his First Article, Folkenflik knew that Butowsky's role and involvement in the investigation of Seth Rich's murder was limited.

69. Folkenflik misrepresented Butowsky's role to make it appear that Butowsky – the wealthy Dallas investment advisor – orchestrated a deception on the American people, including his own advisory clients.

70. In early 2017, Butowsky contacted the family of Seth Rich to help the family investigate their son's unsolved murder. Butowsky graciously offered to pay for a private investigator. [<https://soundcloud.com/siriusxm-news-issues/ed-butowsky-seth-richs-death>].¹⁹

71. On February 23, 2017, Butowsky contacted Wheeler via text message to see if Wheeler would be interested in investigating the murder. Butowsky did not know Wheeler, but had seen him on television. Wheeler appeared to be a competent investigator.

72. Wheeler entered into a contract with the Rich family (specifically, with Aaron Rich, Joel Rich and Mary Rich) to investigate the murder of Seth Rich. As Wheeler stated to FetchYourNews on May 22, 2017:

The Rich's were aware of my background as a criminal investigator, specifically as a former police homicide investigator. They indicated that they had seen my many appearances on the Fox News Channel commenting and analyzing dozens of criminal cases and have always been impressed by my knowledge and experience.

The Rich's engaged my services to assist with gathering information and evidence, in an effort to try to assist the Metropolitan Police Department identify the person(s) responsible for the murder of Seth.

[<https://fannin.fetchyournews.com/2017/05/22/detective-rod-wheeler-releases-statement-concerning-the-death-of-dnc-staffer-seth-rich/>].

¹⁹ Butowsky also donated \$250 to Aaron Rich's GoFundMe campaign to raise money, *inter alia*, to maintain and increase the reward for information leading to an arrest and conviction of Seth Rich's killer. [<https://www.gofundme.com/SethRich>].

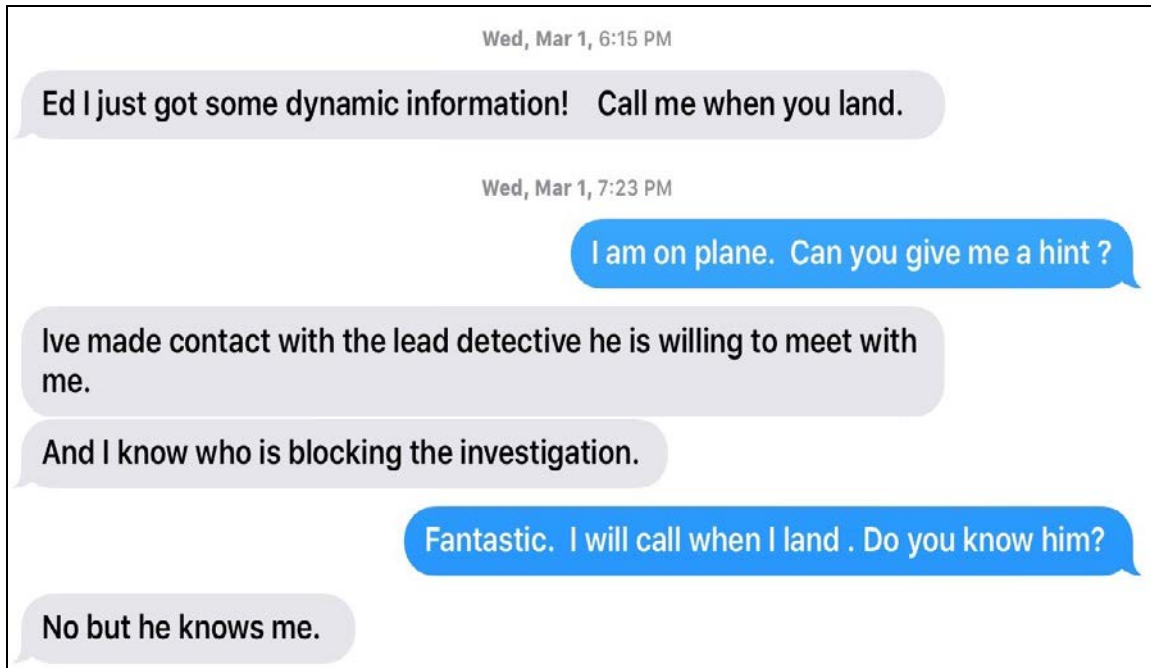
73. Butowsky was not a party to the contract between Wheeler and the Rich family. He has never seen the contract.

74. Although Folkenflik made it appear that Butowsky orchestrated and directed Wheeler's murder investigation, in truth Butowsky did not participate in Wheeler's investigation and had very little communication with Wheeler. Folkenflik knew that Butowsky's involvement was limited.

75. Wheeler publicly confirmed Butowsky's limited involvement in the investigation. On May 16, 2017, Wheeler represented to Sean Hannity that "I was hired by the family, Joel and Mary Rich. They signed the contract. Now, the financial benefit, if there were any financial benefit and by the way there wasn't much, that was actually paid for by a **third party [Butowsky] that I have had very little communication with at all, Sean**". [<https://www.youtube.com/watch?v=CuRJDKEVxHY> (emphasis added)].

76. Folkenflik misrepresented Butowsky's actual involvement in Wheeler's investigation. Folkenflik made it appear as if Butowsky was at the center of the investigation, directing Wheeler, feeding him "tips", and telling him what to do. Folkenflik falsely portrayed Butowsky as a puppet master "behind the scenes", feeding "tips" to Wheeler and telling Fox what to do. Far from the truth.

77. On March 1, 2017, Wheeler told Butowsky that he (Wheeler) had independently acquired some "dynamic information" from one of his sources, the "lead detective" on the Seth Rich murder case. Wheeler also claimed that he had learned and knew who was "blocking the [murder] investigation". Wheeler texted Butowsky as follows:



Wheeler told Butowsky that he was meeting with “2 inside contacts” on March 2, 2017.

78. On or before July 28, 2017, Wheeler’s texts were available to Folkenflik on the Internet and via Twitter. [<http://www.debunkingrodwheelersclaims.com/>; <https://twitter.com/debunkrwheeler?lang=en>]. The Twitter account, @debunkrwheeler, published the following tweet on July 28, 2017:



79. On March 31, 2017, Wheeler appeared on Fox 5 DC. Wheeler uploaded and published the interview to his YouTube channel – “Rod Wheeler” [<https://www.youtube.com/user/4apryl>]. Wheeler called the video “Fox 5 DC Seth Rich Death Rod Interview”. [https://www.youtube.com/watch?v=D_nsLuFyb60].

80. Butowsky did not arrange the interview with Fox 5 DC. Butowsky did not provide a script or prompt Wheeler in any way.

81. In the interview, Wheeler claimed that he had been investigating the murder of Seth Rich over the “past three weeks”.

“[T]here has been a lot of reward money that’s been offered for any information. No one has come forward. So here is the thing that is so important to realize whenever you have a lot of reward money, in this case it is over \$125,000, and you don’t have anyone coming forward with information. Then what that tells you as an investigator is that maybe you need to start looking at another cause or another reason as to why this guy was killed and that’s what we’re doing now. We’re looking at uh possibly of course a street robbery, but it could, and I underline the word could, it could have been related, his death to his job, it could have been related to something else. **what I don’t think it was related to though Allison is this Russian hacking thing.**”

(Emphasis added). After the interviewer pointed out to Wheeler that people were “hinting at the fact that perhaps Seth Rich may have given some documents [to Wikileaks]”, Wheeler, voluntarily and of his own free will, stated as follows:

“Well a lot of people have made that same observation and you have to ask yourself what is the motivation behind a person wanting to get involved and offer reward money, maybe he’s just a good guy and he has a lot of money laying around so this how he wants to spend his money, but you have to be careful though when you start throwing out these conspiracy theories, they actually don’t help the investigation at all ... **I haven’t found one shred of evidence at all that indicates that Seth’s death is the result of any Russian hacking or anything like that.** I do think it’s possible and I underline the word possible that it could have been related to his job to some degree or relationships with the job, don’t know that for sure but for investigators we have to go down every path until we can determine who was responsible for his death”.

(Emphasis added).

82. Wheeler made the representations he did to Fox 5 DC because of his own independent investigation into the Seth Rich murder.

2. **Folkenflik Misrepresented Wheeler's Contacts With Zimmerman**

83. Zimmerman is an award-winning investigative reporter employed by FoxNews.com. Her reports for Fox largely deal with crime, terrorism in the U.S. and overseas, homeland security, illegal immigration, and political corruption. [<http://www.foxnews.com/person/z/malia-zimmerman.html>].

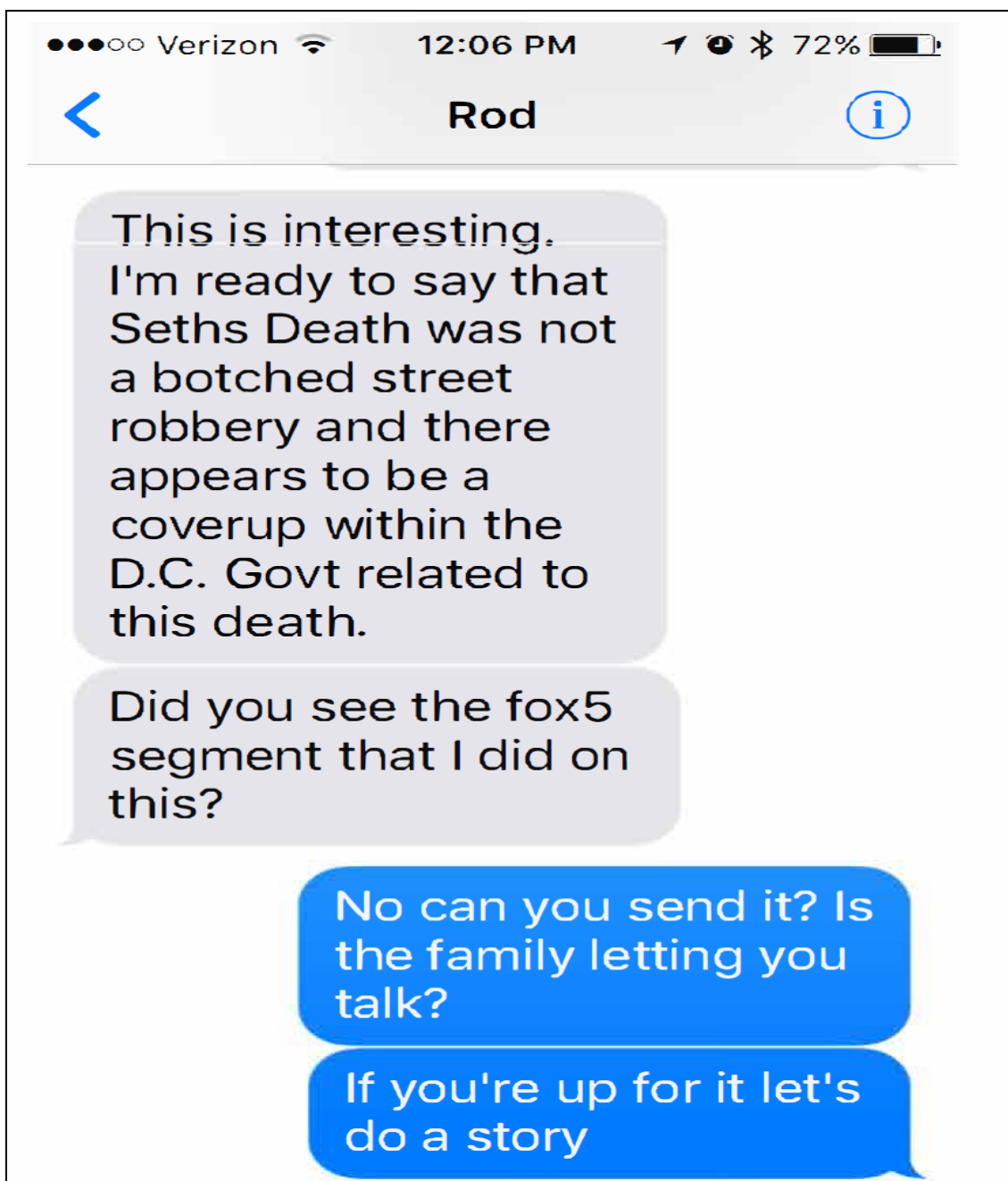
84. After he appeared on Fox 5 DC, Wheeler updated Zimmerman concerning his investigation.

85. In his reporting, Folkenflik downplayed and downright misrepresented the extent of the contact between Wheeler and Zimmerman. Folkenflik concealed the fact that Wheeler was actively and extensively in contact with Zimmerman.

86. Wheeler advised Zimmerman that he (Wheeler) was prepared to say that Rich's murder was **not** the result of a "botched street robbery". Wheeler further offered to Zimmerman that his investigation revealed a "coverup within the D.C. Govt" related to Rich's death.²⁰

87. Zimmerman, who knew Wheeler worked for the Rich family, asked Wheeler if the family was letting him talk. If Wheeler was "up to it", Zimmerman expressed interest in doing a story on the murder investigation. Wheeler and Zimmerman exchanged the following text messages:

²⁰ On May 16, 2017, District of Columbia Mayor Muriel Bowser called allegations that the city's police department is involved in a cover-up in the Seth Rich murder investigation "preposterous." [<http://dailycaller.com/2017/05/16/dc-mayor-says-allegations-of-cover-up-of-seth-rich-murder-are-preposterous/>].



3. **Folkenflik Knew The President Was Not Involved In Any Way**

88. On April 18, 2017, Butowsky sent Wheeler a text message, inquiring whether Wheeler would be in DC on Thursday, April 20.

89. Butowsky planned to meet with White House Press Secretary, Sean Spicer (“Spicer”).

90. Wheeler had been asking Butowsky nonstop to get him an interview, so he (Wheeler) could get a job in the White House.²¹ Butowsky asked Wheeler to put together a summary of his findings to date, and to bring the report with him to the meeting. Butowsky emailed Spicer, and asked for a 10-minute meeting, with no specified topic, to catch up. Butowsky informed Spicer that he would be bringing a Fox News contributor to the meeting.

91. The meeting with Spicer lasted 10-15 minutes. Most of the time was spent talking about shirts. Butowsky and Spicer bought their shirts from the same source: Jacomo Hakim's Bookatailor. At the meeting, Butowsky and Wheeler, *inter alia*, told Spicer that they were working on a story about Seth Rich and wanted Spicer to be aware of it – that was it.

92. The President of the United States was not at the meeting and Spicer did not inform the President about the meeting.

93. Folkenflik had no evidence of any connection between Butowsky and the President because there was no connection. He knew his statements to *Mediaite* were absolutely false.

²¹ See, e.g., <https://www.youtube.com/watch?v=NaNhtlS2GxE> (recording of phone call in which Wheeler expresses a desire to be employed by the White House) (“the President can appoint me as an administrator to the President ... to specifically report to him and start taking a look at all of these cases. He can do it. Because someone needs to reign this stuff in and Trump is the person to do it ... Whether you like Obama or not, for eight years I think this corruption has been allowed to manifest. Now we got a new President in there and they can't be as corrupt as they used to be, and that's messing with people's minds.”).

94. On July 31, 2017, Folkenflik interviewed Spicer. Spicer **denied** the claims that the President colluded with Butowsky and/or Fox. Spicer told Folkenflik the following:

- “Ed’s been a longtime supporter of the president and asked to meet to catch up.”;
- “I didn’t know who Rod Wheeler was. Once we got into my office, [Butowsky] said, ‘I’m sure you recognize Rod Wheeler from Fox News’”;
- Butowsky laid out what had been found about the case. “It had nothing to do with advancing the president’s domestic agenda — and there was no agenda. They were just informing me of the [Fox] story”;
- Spicer was not aware of any contact, direct or not, between Butowsky and Trump.

4. **Folkenflik Knew Wheeler Had Interviewed Detective Dellacamera**

95. Folkenflik knew that as part of the murder investigation, Wheeler was in direct contact with the “lead detective” – Joseph Dellacamera (“Detective Dellacamera”). Again, the fact of Wheeler’s extensive contact with Dellacamera and the information divulged to Wheeler by Dellacamera were both available on the Internet and well-known to Folkenflik.

96. Information that Wheeler obtained from Detective Dellacamera supported Wheeler’s belief and his public statements to Zimmerman and others that Seth Rich had been in contact with WikiLeaks and had sent emails to WikiLeaks.

97. On April 25, 2017, Wheeler interviewed Detective Dellacamera.

98. Wheeler’s notes of the interview, published on the website www.debunkingrodwheelersclaims.com, state:

When asked specifically was there any information located on any of Seth's computers that would indicate that he did in fact send emails to WikiLeaks, DellaCamera replied, "there is certain information that I can't provide regarding the case itself, and I hope you understand, like I said, I can't reveal detailed information about the case itself." "I have strict, strict rules by my bosses, because of what this case is, that says don't provide information out, other than what is already publicly out there. I just can't go into detail with what I know." At this time DellaCamera was asked is it a possibility that emails were found on Seth's computer related to the DNC and this could be a motivation for his being killed? DellaCamera replied, "anything's possible; I can't say one way or the other....."

DellaCamera was told that the family were told by me (Wheeler) that regardless of whatever direction the investigation goes, we need to solve the murder, identify the bad guy and get him off the street. So, in keeping with that spirit, I need to "rule out" the possibility that Seth's death could have been related to his job at the DNC. I (wheeler) haven't been able to rule out that someone from the DNC could have been responsible for Seth's death. DellaCamera was asked, "were you aware that Seth was having problems with two supervisors at his job (DNC) and he was very emotionally upset because of his problems at the DNC? DellaCamera replied, "I was aware that there were problems, but I don't know who the supervisors were that he was having problems with." Next, DellaCamera was asked if he was aware that Seth received money from WikiLeaks in exchange for the emails? Did you look into his (Seth's) financial records? DellaCamera replied, "again, I can't go into details with specifics about the case such as that...I really can't. Nothing against you, Rod but I'm just not trying to get myself jammed up." DellaCamera was asked, "so the higher-ups in the department are very aware of this case?" He replied, "Oh yeah, for sure."

I asked once again about the email records. I informed DellaCamera that we need to "disprove" the theory that Seth was killed because of this job at the DNC. DellaCamera stated, "honestly, put it this way, if Seth worked anywhere else other than the DNC, nobody would give a shit about his death. The only reason there is such interest is because of where he worked." DellaCamera was asked, "so why is that?" He replied, "again, it goes back to the DNC...a political organization and it all started stemming from around the time of the election..and it sounds like someone was trying to ruffle feathers...I mean that's what I think."

Anything's possible." "Look, look Rod, please, please do not quote me on anything.....I don't need that shit coming back on me..if I'm quoted, I will probably be reassigned to CCB somewhere.....moving property around. There's certain details of the case that we just can't renewal to anybody, just for the integrity of the case. But, do what you got to do for your business and the news story, but please don't, don't throw me under the bus Rod."

Then Wheeler asked, "did your review of Seth's computer reveal that any emails went out to WikiLeaks?" DellaCamera replied, (after a long pause), well, well...there's stuff on there that, it's its, emails are sent everyday....um...the context of the emails I can't get into the details, um, again, I don't have anything pointing the finger at the DNC other than the conspiracy theories. Nobody has come to me with direct information and provided detailed information about the DNC being involved somehow.

5. **Folkenflik Disregarded Wheeler's Public Statements to Marraco**

99. Prior to publishing anything about Fox, Zimmerman or Butowsky, Folkenflik knew that Wheeler had publicly stated to Fox 5 DC that Seth Rich had been in email contact with WikiLeaks. Folkenflik knew that Fox 5 DC published an online story confirming the following facts obtained from Wheeler:

FOX 5 Sections Live News Local Weather Mornings Traffic Contests FOX 5 Plus Recipe Box

Local News DC News Maryland News Virginia News Pay It Forward Zip Trip Seen on TV Contact FOX 5

Family's private investigator: There is evidence Seth Rich had contact with WikiLeaks prior to death

Private investigator: There is evidence Seth Rich had contact with WikiLeaks prior to death

FOX 5 10:04 69

SPRING INTO SAVINGS WITH MICHAEL & SON'S PRECISION AC TUNE Michael & Son COOLING

By: Marina Marraco

POSTED: MAY 15 2017 10:41PM EDT
VIDEO POSTED: MAY 15 2017 10:54PM EDT
UPDATED: MAY 17 2017 11:32PM EDT

[\[http://www.fox5dc.com/news/local-news/private-investigator-there-is-evidence-seth-rich-contacted-wikileaks-prior-to-death\]](http://www.fox5dc.com/news/local-news/private-investigator-there-is-evidence-seth-rich-contacted-wikileaks-prior-to-death).

100. Wheeler had a crush on Fox 5 DC correspondent, Marina Marraco. Wheeler called Marraco.

101. On May 15, 2017, Marraco interviewed Wheeler concerning his investigation of Seth Rich's murder and his findings to date as part of a Fox 5 DC "exclusive". [\[https://www.youtube.com/watch?v=x48PeHvTddc\]](https://www.youtube.com/watch?v=x48PeHvTddc).

102. Butowsky had absolutely nothing to do with Wheeler's decision to be interviewed by Marraco or the statements that Wheeler voluntarily made to Marraco based on Wheeler's first-hand knowledge and investigation of the murder of Seth Rich.

103. On May 15, 2017, Wheeler made the following unqualified statements on camera to Marraco:

"MARINA MARROCO: Today Fox 5 has learned there is new information that could prove these theorists right. New information from the family's private investigator suggests there is tangible evidence on Seth Rich's laptop that confirms he was communicating with Wikileaks prior to his death. Now the question is why has DC police as the lead agency on the investigation for the past 10 months insisted this was a botched robbery when until this day there is no evidence to suggest that. The Rich family hired Rod Wheeler a former MPD homicide detective to run a parallel investigation into their son's death. Wheeler says he believes there is a cover up and the police department has been told to back down from the investigation."

WHEELER: Neither the police department nor the FBI have been forthcoming. They haven't been cooperating at all. I believe that the answer to solving his death lies on that computer, which I believe is either at the police department or at the FBI. I've been told both.²²

MARINA MARRACO: But you have sources at the FBI saying that there is information ...

²² Actually, Wheeler had been told that Aaron Rich had the computer. [\[https://twitter.com/wikileaks/status/892494677823434753?lang=en\]](https://twitter.com/wikileaks/status/892494677823434753?lang=en).

WHEELER: For sure ...

MARINA MARRACO: That could link Seth Rich to Wikileaks?

WHEELER: Absolutely, yeah, and that's confirmed. Actually, I have a source in the police department that has looked at me straight in the eye and said 'Rod we were told to stand down in this case and I can't share any information with you'. Now that is highly unusual for a murder investigation, especially from a police department. Again, I don't think it comes from the Chief's office, but I do believe there is a correlation between the Mayor's office and the DNC, and **that's the information that is going to come out tomorrow.**"

(Emphasis added). When asked by a Fox 5 DC anchor whether there would be "evidence" to prove the statements made by Wheeler, Marraco stated as follows:

"MARINA MARRACO: ... Rod Wheeler, the investigator, assures us Fox 5 and assures Fox News that there's a full report that contains information that will show how many times Seth Rich made contact with Wikileaks and will show exactly when this communication took place."²³

104. In his rush to publish a scandalous story, Folkenflik intentionally ignored Wheeler's statements to Fox 5 DC and Marraco. Folkenflik never interviewed Marraco. In spite of evidence to the contrary, Folkenflik never doubted Wheeler and his handler, Wigdor.

6. Folkenflik Actually Knew That Fox Accurately Quoted Wheeler

105. Despite his actual knowledge that Fox accurately quoted Wheeler, Folkenflik intentionally misrepresented that Fox, in concert and with the support of Butowsky, had "concocted" a "fake news story" about the Seth Rich murder to support the President.

²³ In an audio recording published on YouTube on July 12, 2017, Wheeler claimed that Marraco had tricked him, that she took things out of context, that she did not "play" the whole tape of the interview, that he (Wheeler) did not know he was being recorded. [<https://www.youtube.com/watch?v=2p8at6PD4L8>].

106. On May 15, 2017, Wheeler was in contact with Zimmerman multiple times about the article Zimmerman was writing.

107. Folkenflik had copies of all the email and text message communications between Wheeler and Zimmerman, which he obtained from Wigdor and which were also published and available on the Internet. [<http://www.debunkingrodwheelersclaims.com/>].

a. **The First Email**

108. At 1:20 p.m. on May 15, 2017, Zimmerman emailed Wheeler a “current draft” of her article:

From: **Malia Zimmerman** <maliamzimmerman@gmail.com>
Date: Mon, May 15, 2017 at 1:20 PM
Subject: small changes included - current draft
To: Rod Wheeler <rod@rodwheeler.com>

109. Wheeler received Zimmerman’s email.

110. Zimmerman’s May 15 “current draft” contained the following words:

Rod Wheeler, a former DC Homicide police detective who now runs a private detective firm and was hired to investigate Rich’s murder, said he too uncovered substantial evidence and information that led him to believe the connection between Rich and Wikileaks.

111. Zimmerman’s May 15 “current draft” attributed the following quotes to Wheeler:

“My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks,” said Wheeler, who also is a Fox News contributor.

“My investigation shows someone within the DC government, Democratic National Committee or Clinton team, is blocking the murder investigation from going forward,” Wheeler said. “That is unfortunately. Seth Rich’s murder is unsolved as a result of that.”

112. Far from denying anything in the May 15 “current draft”, Wheeler offered Zimmerman further quotes, including the following:

Here is another quote you may want to consider using "I sincerely believe that there is an underground culture of corruption that exist within the confines of the nations capital that includes quite possibly the crime of murder. It's time that the FBI immediately conduct a full and thorough investigation to not only the death and who caused the

death of Seth rich but those that he was involved with and others regarding the Democratic national committee."

113. The quotes attributed to Wheeler in Zimmerman's "current draft" were identical in substance to statements Wheeler had made in March to Butowsky; to statements Wheeler made in text messages to Zimmerman; and to statements made by Wheeler to Marraco and Fox 5 DC in May.

114. The quotes were also completely consistent with Wheeler's notes of his interview with Detective Dellacamera.

115. Wheeler did not deny the quotes or object to anything Zimmerman had written in the "current draft".

116. Wheeler did not inform Zimmerman that any of his quotes were inaccurate in any way.

117. If he had objected to anything Zimmerman wrote, Wheeler had a duty to be truthful. In good conscience, Wheeler should have informed Zimmerman of any inaccuracies.

118. Wheeler knew Zimmerman and Fox were relying on Wheeler to be truthful and honest.

119. As an experienced journalist, Folkenflik knew that Wigdor and Wheeler were lying when they told Folkenflik that Fox fabricated the Wheeler quotes. Folkenflik chose to act out a lie and published Wigdor's false narrative. After all, Wigdor had given Folkenflik and NPR the "exclusive".

b. The Second Email

120. At 3:59 p.m. on May 15, 2017, Zimmerman emailed Wheeler a revised draft of the article.

121. The subject line of Zimmerman's 3:59 p.m. email expressly advised and instructed Wheeler to "please read carefully" (emphasis added):

From:	Malia Zimmerman <maliamzimmerman@gmail.com>
Sent:	Monday, May 15, 2017 3:59 PM
To:	Ed Butowsky; Rod Wheeler
Subject:	please read carefully

122. The revised 3:59 p.m. draft of Zimmerman's article made the following statement about Wheeler:

Rod Wheeler, a retired DC Homicide police detective who now runs a private detective firm and was hired to investigate Rich's murder, said he too uncovered evidence that confirms the connection between Rich and Wikileaks.

123. The revised 3:59 p.m. draft of Zimmerman's article contained the following quotes attributed to Wheeler:

"My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks," said Wheeler, who also is a Fox News contributor.
--

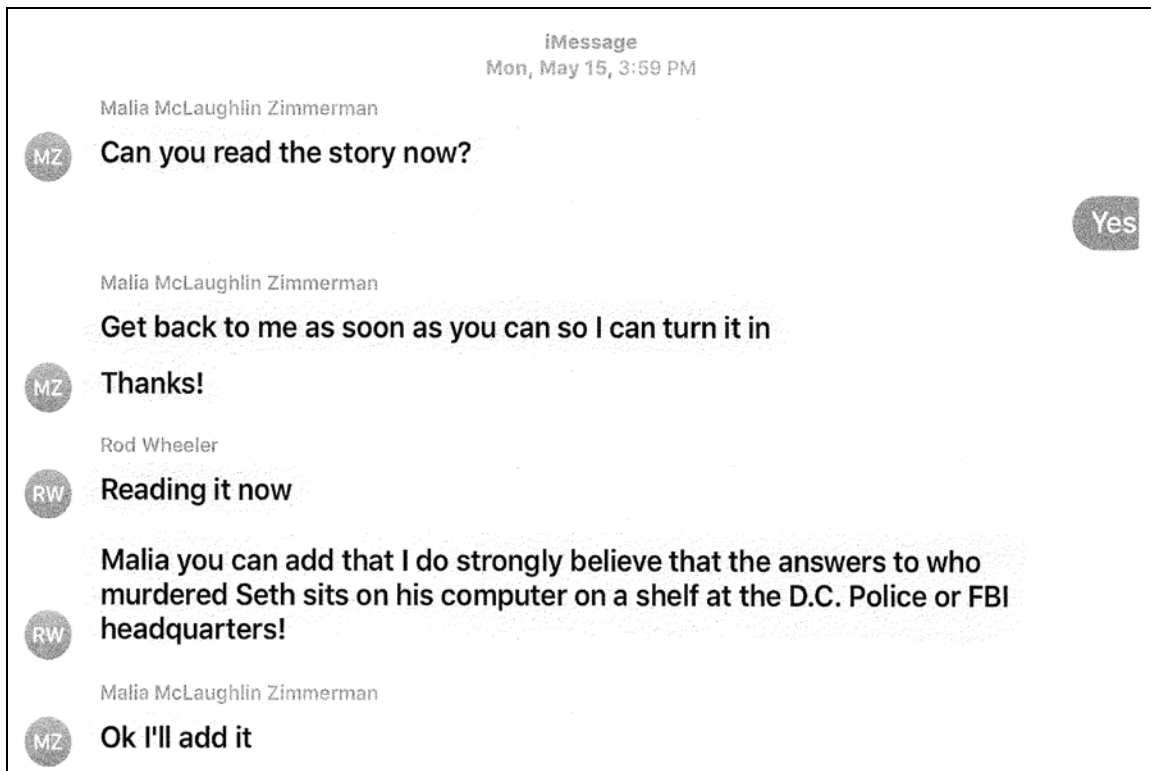
"My investigation also shows someone within the DC government, Democratic National Committee or Clinton team, is blocking the murder investigation from going forward," Wheeler said. "That is unfortunately. Seth Rich's murder is unsolved as a result of that."
--

124. After sending her email with the revised article, Zimmerman texted Wheeler via iMessage to confirm that he had received the revised article and that he could read it.

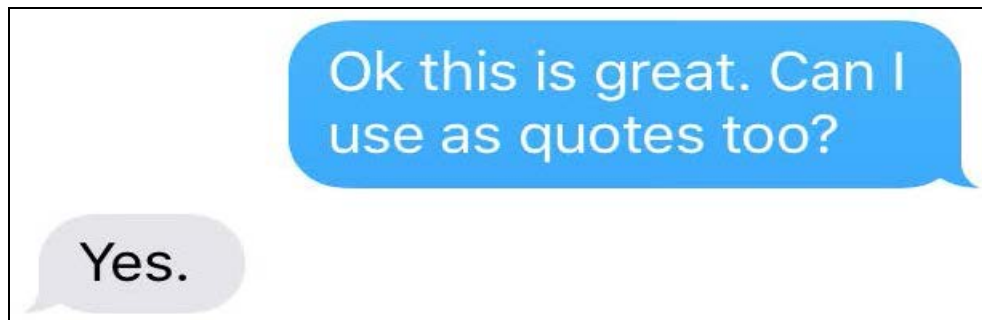
125. Wheeler confirmed that he had received Zimmerman's email and that he had read the revised article.

126. Far from denying any quotes attributed to him in the revised article,

WHEELER OFFERED ZIMMERMAN FURTHER QUOTATIONS!!!:



127. At no point in time did Wheeler ever deny making the statements quoted by Zimmerman. In fact, when Zimmerman asked Wheeler if she could use the quotes, Wheeler responded as follows:



128. Wheeler never hesitated, never equivocated, never prevaricated, and never denied the quotes.

129. Wheeler never attempted to correct, amend, clarify, or retract the quotes.

130. Before he published his August 1, 2017 article on NPR.org, Folkenflik had irrefutable evidence that Wigdor was peddling a false narrative.

131. Acting in concert with Wigdor, Folkenflik disregarded serious doubts as to the veracity of Wheeler and republished a story that Folkenflik knew to be false. Folkenflik knew the fake news would immediately create massive publicity that would cast aspersion upon Butowsky and portray him in a false light. Folkenflik republished the false narrative because he had a deal with Wigdor.

c. **The Third Email**

132. At 4:47 p.m. on May 15, 2017, Zimmerman sent Wheeler a third email that included the final draft of the article. Zimmerman's email specifically advised Wheeler that the draft had been "turned in" to her editors:

From:	Malia Zimmerman <maliamzimmerman@gmail.com>
Sent:	Monday, May 15, 2017 4:47 PM
To:	Rod Wheeler; Ed Butowsky
Subject:	draft turned in

133. As Folkenflik well knew, this was Wheeler's third and final chance to deny the quotes.

134. Wheeler made no attempt to stop the presses.

135. The final draft of Zimmerman's article, emailed to Wheeler at 4:47 p.m. on May 15, 2017, contained the following quotes attributed to Wheeler:

<p>"My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks," said Wheeler, who was hired to investigate Rich's murder. "I do believe that the answers to who murdered Seth Rich sits on his computer on a shelf at the DC police or FBI headquarters."</p>

“My investigation shows someone within the DC government, Democratic National Committee or Clinton team is blocking the murder investigation from going forward,” Wheeler said. “That is unfortunately. Seth Rich’s murder is unsolved as a result of that.”

136. Wheeler’s own text messages and emails (quoted verbatim above and available to Folkenflik prior to August 1, 2017), the notes of his interview with Detective Dellacamera, and Wheeler’s statements to Marraco on May 15, 2017 confirm that Fox accurately quoted Wheeler. Wheeler’s statements to Marraco bear repeating:

“I believe that the answer to solving his death lies on that computer, which I believe is either at the police department or at the FBI.”

137. In addition to the emails and text message exchanges, Wheeler confirmed verbally to Zimmerman that the article accurately depicted his statements, and Wheeler expressed his support for the story. These statements occurred on conference calls several days leading up to publication of Zimmerman’s story, including telephone conversations on May 10, 2017 (10:30 am), May 11, 2017 (9:52 am and 10:12 am), and May 15, 2017 (11:22 am and 1:13 am).

138. Wheeler also confirmed verbally to Butowsky that he had independently formed the belief, before publication of Zimmerman’s article, that there were email communications between Seth Rich and Wikileaks.

139. In his blind desire to publish a story disparaging of Fox, Folkenflik intentionally and maliciously disregarded the very record before him.

7. Folkenflik Disregarded Seymour Hersh’s Recorded Statement

140. In an audio recording published on July 11, 2017, Hersh provided the following statement:

“What I know comes off an FBI Report ... The kid [Seth Rich was] ... a nice boy, twenty-seven. He was not an IT expert, but he learned stuff. He was a data programmer ... Here’s what nobody knows ... when you have a death like that, DC cops ... have to get to the kid’s apartment and see what you can find ... so they get a warrant ... They go in the house and they can’t do much with his computer ... They have a cyber unit in DC, and they’re more sophisticated. They come and look at it. The idea is that maybe he’s had a series of exchanges with somebody who’s said ‘I’m going to kill you, you motherfucker’ ... and they can’t get in ... So, they call the FBI cyber unit. The DC ... Washington Field Office is a hot shit unit ... There’s a cyber unit there that’s excellent ... The Feds get through and here’s what they find. This is according to the FBI Report ... What the Report says is that sometime in late Spring ... early Summer, he [Seth Rich] makes contact with WikiLeaks. That’s in his computer ... They found what he had done. He had submitted a series of documents ... juicy emails from the DNC ... He [Seth Rich] offered a sample, an extensive sample ... of emails, and said I want money. Later, WikiLeaks did get the password. He had a ... protected dropbox ... He also, and this is in the FBI Report, he also let people know with whom he was dealing ... The word was passed, according to the FBI Report, ‘I also shared this box with a couple of friends, so if anything happens to me, it’s not going to solve your problems’ ... WikiLeaks got access before he was killed.”

[<https://www.youtube.com/watch?v=giuZdBAxVh0>].

141. In his reporting, Folkenflik completely disregarded Hersh’s recorded statement.

142. Instead, Folkenflik peddled a preconceived narrative that the Fox News story, directed and supported by Butowsky, was “baseless”. Folkenflik knew his statements were false.

8. Folkenflik Knew About Wheeler’s Appearances On Hannity and Dobbs

143. On May 16, 2017, in the early morning, Fox published Zimmerman’s story entitled, “*Seth Rich, slain DNC staffer, had contact with WikiLeaks, say multiple sources*”. The article included the statements that Wheeler had made and approved.

[<http://web.archive.org/web/20170516133954/http://www.foxnews.com/politics/2017/05/16/slain-dnc-staffer-had-contact-with-wikileaks-investigator-says.html>].

144. Fox News also tweeted Zimmerman’s story to its 16 Million followers:



145. Folkenflik knew that on May 16, 2017 – after publication of Zimmerman’s article – Wheeler appeared on Fox News where he was interviewed by Sean Hannity (“Hannity”). [<https://www.youtube.com/watch?v=CuRJDKEVxHY>].

146. When he spoke with Hannity, Wheeler knew the Zimmerman article had been published with his approved quotations included.

147. Wheeler once again expressly confirmed that Seth Rich had communicated with WikiLeaks.

148. The transcript of Wheeler's interview with Hannity is clear and unambiguous:

"HANNITY: The timeline is fascinating here. As I played in the last segment, Julian Assange I asked him repeatedly on radio and television if Russia was involved, absolutely not. Now believe him or not, he's the guy at WikiLeaks who has an 11 year history of never being proven wrong ... I guess my question is when you look at the timeline of this, and 12 days after he was killed it shows up on WikiLeaks, **what did you discover in terms of the contacts with WikiLeaks?**

WHEELER: Right, well that is an excellent question and let me clear that up right now exactly what it was that I found. Now I have never seen the emails myself directly. I haven't even seen the computer that Seth Rich used. Here is the problem with all of this: I don't even know where the computer is. I checked with the police department. They said they don't know where the computer is and the FBI they say they don't have the computer. Now, where did this information come from in terms of knowing or believing, I should say, that Seth Rich could have been in communications with WikiLeaks. There was a federal investigator that was involved on the inside of the case, a person that is very credible. And I'll tell you, let me just say this Sean, I don't like to suggest things without saying the person's name, but I can't say that person's name because that person would be thrown under the bus. And I can't do that, but **this person we checked him out, we had to check him out, very credible. He said he laid eyes on the computer, and he laid eyes on the case file, and he came across very credible. When you look at that with the totality of everything else I've found in this case, it's very consistent for a person with my experience to begin to think well perhaps there were some email communications between Seth and WikiLeaks. Everytime I talk to the police department though Sean, everytime I talk to the police department about the WikiLeaks or the emails, it's automatically shut down. That discussion is automatically shut down.**

...

(Emphasis added). *Wheeler never once informed Hannity that Zimmerman or Fox or Butowsky had misquoted him. Wheeler never claimed that Fox, with Butowsky's support, had "fabricated" quotes or that the Zimmerman article was "fake news". Wheeler never said that Butowsky had "fed" him "tips". Wheeler went on to tell Hannity that:*

“[i]f this is just a murder investigation, first of all why would the FBI be involved? The only reason the FBI would be involved just so that the viewers understand is if this has some degree of national exposure, meaning because maybe it is related to the DNC. We don’t know that. We don’t know that for sure. It could have been a botched robbery, but my point is this Sean and I’ve been investigating murders for a while you have to look at every possibility you can’t just look at one thing say well that has to be it ... But here is the thing, and this is so important, there has been a \$125,000 reward out for information pertaining to the death of Seth Rich. Not one person has come forward. Here is one other thing that is going to be startling and I’m just going to say this right now. I reached out to the police department way back in March when the family first hired me right to get involved. I didn’t hear anything from the police department for 2-3 days. Guess what I learned yesterday [May 15, 2017] from the family of Seth Rich? The police department did not call me back because someone, a high-ranking official at the DNC, check this out, a high-ranking official at the DNC, when I called the police department. They got that information and called the Rich family wanting to know why was I snooping around?

...

I don’t know for sure. **I don’t know as a matter of fact if the emails went out to the WikiLeaks or anybody else, but it sure appears that way.**”

(Emphasis added).

149. Folkenflik knew all about the Hannity interview, just like he knew about Wheeler’s extensive text and email communications with Zimmerman and Butowsky. Folkenflik knew that Wheeler – who was held out by Wigdor as a seasoned DC homicide investigator – opined that it “sure appears” there were email communications between Seth Rich and WikiLeaks.

150. Folkenflik also knew that Wheeler had disclosed to Zimmerman what the Rich family had said. In text messages on May 15, 2017, published on the Internet and available to Folkenflik, Wheeler expressly advised Zimmerman as follows:

“Joel [Rich] said that when I called the police department, right after that Donna Brazile called him and was asking him why I was snooping around asking questions about death of Seth and his working relationships at the DNC. **I was startled to learn that Donna Brazile even knew that I reached out to the police department.** So basically when I called the police department that information was automatically given to Donna Brazile and she caught [sic] Joel wanting to know why I was inquiring about Seth relationships at the DNC. **As a police investigator that automatically makes me think that Donna Brazile is in a category of persons of interest as it relates to the death of Seth Rich.** I also spoke with another source who informed me that not only was Donna Brazile snooping around wanting to know what I was learning with regards to the DNC and Seth Rich but also **I was told that Debbie Wasserman Schultz was snooping around wanting to know how much it was I [sic] learning.**”

“I just read the email you sent. **Joel [Rich] informed me that Donna Brazile called him not the police department asking why I was snooping around.** My question is how did she know I called the detective so quick.”

(Emphasis added).

151. In addition to Hannity, on May 16, 2017 Wheeler appeared on Fox Business with Lou Dobbs (“Dobbs”) to discuss the Seth Rich murder investigation. [<https://www.youtube.com/watch?v=2tqckO7bBjk>]. Dobbs asked Wheeler about “this federal investigator, we’re in an unusual situation, an FBI forensic report showing 44,000 emails 18,000 attachments, that approximates just about what was released by WikiLeaks ... do you think that is a coincidence?” Wheeler replied without hesitation,

“WHEELER: No, I actually don’t think it’s a coincidence... his information that he shared with Fox News is pretty consistent with everything else I’ve been learning²⁴ including the fact that right now no one seems to know where the computers are that belonged to Seth Rich, the computers obviously were confiscated at some point.”

When Dobbs asked about the claim that DC detectives were told to “stand down”,

Wheeler stated:

²⁴ Wheeler vouched for the FBI Report and expressed no doubt that there was email communication between Seth Rich and WikiLeaks.

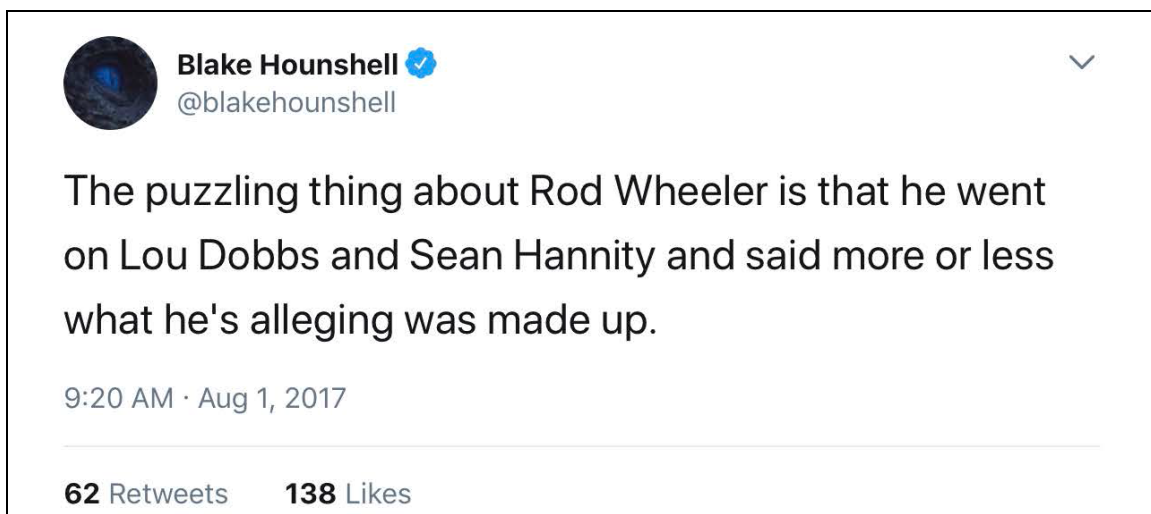
WHEELER: And that is a claim I actually heard myself from a detective, who said 'Rod we were told not to investigate this fully'. Now see that's interesting because that is consistent with what this federal investigator said. The federal investigator never knew Lou, that I had heard from a detective in the police department to stand down. Well if this guy says the same thing, you have to start saying to yourself well maybe there is some truth behind this. So, that's why I think when you look at the totality of everything we have right now it is very consistent with what this federal investigator has said.

...

We also don't have body cameras that I know police officers were wearing on the scene the night in which Seth was killed. That's a problem because we know for a fact those officers had on body cameras. No one knows where the video is. I think we are going to have to continue to look at this case and hope more will come out as time goes by Lou."

152. Folkenflik knew that Wheeler's statements to Marraco, Zimmerman, Hannity and Dobbs in May 2017 cast serious doubts on the false narrative promoted by Wigdor in June/July 2017. In spite of these doubts, Folkenflik published Wigdor and Wheeler's statements as if they were true.²⁵

²⁵ As was well-known to Folkenflik prior to publication of the false and defamatory statements at issue in this action, Wheeler made repeated positive statements to multiple people, and then, in less than 48 hours, claimed that his own statements were fabricated. **Wheeler did a colossal flip-flop.** Blake Hounshell, the Editor-in-Chief of POLITICO Magazine, observed:



9. Folkenflik Knew About Wigdor/Wheeler's Motive To Lie

153. On May 16 or May 17, 2017, one or more members of Seth Rich's family or a spokesman for the Rich family (Bauman) threatened to sue Wheeler for violating the terms of his contract with the Richs by speaking with Marraco, Zimmerman, Hannity and Dobbs. [See, e.g., <https://www.nbcnews.com/politics/justice-department/slain-dnc-staffer-s-family-orders-blabbing-detective-cease-desist-n762211>].

154. Counsel for the Rich family, Joseph A. Ingrisano, Esquire, of Kutak Rock, notified Wheeler that his "statements and actions have caused, and continue to cause, the [Rich] Family severe mental anguish and emotional distress. Your behavior appears to have been deliberate, intentional, outrageous, and in patent disregard of the Agreement and the obvious damage and suffering it would cause the Family." Ingrisano further advised Wheeler that his "improper and unauthorized statements, many of which are false and have no basis in fact, have also injured the memory and reputation of Seth Rich and have defamed and injured the reputation and standing of the members of the Family".

155. Bauman, a DNC crisis operations, strategic planning, digital engagement, rapid response, and media relations "political consultant"²⁶ deployed to represent the Rich family after the murder of Seth Rich, also issued a public statement. Bauman trumpeted the DNC party line: "Anyone who continues to push this fake news story after it was so thoroughly debunked is proving to the world they have a transparent political agenda or are a sociopath". "In either case, they should be taken off the air because they

²⁶ Bauman is the former Executive Director of the Democratic Congressional Progressive Caucus, the largest caucus within the House Democratic Caucus. [<https://cpc-grijalva.house.gov/what-is-cpc/>]. He is currently an agent working for the "Pastorum Group", a full-service communications and political strategy firm founded by Bauman and dedicated to promoting Democratic candidates, causes and coalitions. [<https://www.thepastorumgroup.com/#about-section>].

are either blind to the damage they are doing to a murder victim's family or don't care, showing a profound lack of judgement and common decency." Bauman discouraged the investigation of Seth Rich's murder, upon information and belief, because he was assisting the DNC in a cover-up of Seth Rich's leak of emails to WikiLeaks.

156. The threats from the Rich family and Bauman provided Wheeler with a motive to lie, backtrack and to distance himself from the quotes and statements he had made to Marraco, Zimmerman, Hannity and Dobbs.

157. Folkenflik knew that Wheeler's liability to the Rich family also provided Wheeler with a motive to lie about Butowsky, Zimmerman and Fox.

158. Folkenflik also knew that there was significant conflict between Wheeler and Seth Rich's brother, Aaron Nathan Rich, an employee of defense contractor, Northrop Grumman Corporation (NYSE:NOC) with a Top-Secret security clearance.²⁷ Folkenflik knew that in a YouTube video recording (published July 12, 2017) Wheeler had accused Aaron Rich of obstructing the murder investigation by prohibiting Wheeler from inquiring about "emails". [<https://www.youtube.com/watch?v=2p8at6PD4L8>]. BigLeaguePolitics.com summarized the audio tape of Wheeler's accusations of obstruction as follows:

²⁷

Aaron Rich is a Senior Software Engineer with NOC.

Wheeler said that brother Aaron Rich tried to block Wheeler from looking at Seth's computer, even though there could be evidence on it. "He said no, he said I have his computer, meaning him," Wheeler said. "I said, well can I look at it?...He said, what are you looking for? I said anything that could indicate if Seth was having problems with someone. He said no, I already checked it. Don't worry about it."

Wheeler said that Seth's girlfriend told him that Aaron Rich had possession of Seth's cell phones, but Aaron denied it and said "we're not going to worry about the cell phones."

Aaron also blocked Wheeler from finding out about who was at a party Seth attended the night of the murder.

"All I want you to do is work on the botched robbery theory and that's it," Aaron told Wheeler, according to Wheeler's claim on the audio. Wheeler said that Seth's father Joel "does not appear to have any hidden agenda."

[\[https://bigleaguepolitics.com/audio-rod-wheeler-explains-fox-news-fiasco-claims-brother-blocked-wikileaks-inquiries/\]](https://bigleaguepolitics.com/audio-rod-wheeler-explains-fox-news-fiasco-claims-brother-blocked-wikileaks-inquiries/).

159. Aaron Rich's obstruction and refusal to permit Wheeler to investigate Seth Rich's emails caused Wheeler to believe that there were email communications between Rich and Wikileaks. In the July 12, 2017 audio recording, Wheeler positively stated, **"with everybody pushing back on this email thing in the family and they're so protective of the email, it leads me to think that perhaps there were some communications between Seth Rich and Wikileaks."**²⁸

²⁸ Compare these statements to what Wheeler told Zimmerman and what was published in the Fox News' story:

"My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks," said Wheeler, who was hired to investigate Rich's murder. "I do believe that the answers to who murdered Seth Rich sits on his computer on a shelf at the DC police or FBI headquarters."

160. Wheeler's public statements about the Seth Rich emails should have caused Folkenflik (and Wigdor) to question the veracity of Wheeler's subsequent denial of his quotations to Zimmerman.

10. Folkenflik Could Never Have Believed The Flip-Flopping Wheeler

161. Folkenflik knew that Wigdor's source, Wheeler, flip-flopped on virtually all the essential facts, including what he (Wheeler) had told Marraco. The fact that Folkenflik accepted Wheeler's word as true – when it was verifiably false – demonstrates that Folkenflik acted with reckless disregard for the truth.

162. In an article published on May 17, 2017 at 12:42 a.m., BuzzFeed News quoted Wheeler as follows:

"That story on Fox 5 last night was inaccurate," said Wheeler, a former [DC homicide detective](#).
"I don't even know where the computers are."

https://www.buzzfeed.com/claudiakoerner/the-private-detective-who-ignited-a-clinton-conspiracy?utm_term=.cmYQ8ZrbEz#.xr04N76J3z].

163. On May 17, 2017 at 11:32 p.m., Fox 5 DC published an editor's note. The note emphasized that what Wheeler told Fox 5 DC on camera on Monday, May 15, 2017 regarding Seth Rich's murder investigation is in "clear contrast" to his representations "over the last 48 hours". Fox 5 DC pointed out that Wheeler "backtracked" completely on his assurances given to Fox 5 DC and Fox News on May 15, 2017. After Wheeler backtracked, Fox 5 DC attempted incessantly to communicate with him, but he did not return calls or emails. On May 17, 2017, "just before our newscast, Wheeler responded to our requests via a telephone conversation, where he now backtracks his position and Wheeler characterizes his on-the-record and on-camera statements as

‘miscommunication.’” [<http://www.fox5dc.com/news/local-news/private-investigator-there-is-evidence-seth-rich-contacted-wikileaks-prior-to-death>].²⁹

11. Folkenflik Knew About Wheeler’s Statement to FetchYourNews

164. After May 17, 2017, Wheeler continued to publish statements that should have caused Folkenflik to doubt Wigdor and Wheeler’s false narrative.

165. On May 22, 2017, Wheeler released a statement concerning the death of Seth Rich that was published by Brian K. Pritchard of FetchYourNews.com. [<http://fetchyournews.com/tag/rod-wheeler/>]:

Detective Rod Wheeler releases statement concerning the Death of DNC staffer Seth Rich

FEATURED, NEWS — May 22, 2017, by Brian K. Pritchard



Former Homicide D.C. Detective Rod Wheeler has released the following statement concerning the death of former DNC staffer Seth Rich. Wheeler, “I am still of the personal opinion that his murder may be tied to his employment.”

166. Wheeler’s written statement, in pertinent part, reads:

²⁹ Folkenflik (and Wigdor) had every reason to doubt Wheeler’s veracity. Wheeler’s backtracking and lies were a matter of public record. Folkenflik and Wigdor acted with reckless disregard for the truth when they deliberately republished Wheeler’s false and defamatory statements about Butowsky and Fox.

Since accepting the request of the Rich family to assist them in this investigation, I have always been focused on one thing, and one thing only; finding out who is responsible for the death of Seth. I feel as if I was making good progress and getting very close to developing a motive. Further, I can say that I have developed what I believe to be persons of interest, that I essentially would like to talk to further regarding information that they may have surrounding Seth's death. I am of the personal opinion that the information/article reported by FoxNews Channel last Tuesday was essentially correct and worthy of further investigation. That is exactly why when I first learned of this new information developed by a FoxNews investigative journalist, I immediately called the DC Police to inform them.

Wheeler publicly admitted that Zimmerman's article was "**essentially correct and worthy of further investigation**". (Emphasis added).³⁰

167. Folkenflik failed to report any of this in his Articles. Rather, he concealed the truth and materially misrepresented Wheeler's position.

168. Rupert Murdoch's daughter-in-law, Kathryn Murdoch (wife of James Murdoch), worked for the Clinton Foundation and is a friend of the Clintons. [<http://www.qdvm.org/kathrynmurdoch/>]. As Folkenflik well knew, Kathryn Murdoch is also an outspoken critic of President Trump.

169. Zimmerman's article was not pulled by Fox because it was "concocted" or "fake news" or "deceptive" or any of the other pejorative connotations used by Folkenflik

³⁰ Despite Wheeler's own words, Wigdor and Wheeler falsely stated that on May 16, 2017, Wheeler called Zimmerman and confronted her about the use of false statements in the article. Wigdor and Wheeler ginned up a story that Zimmerman told Wheeler that she would have the statements removed from the article and, when they were not removed, that Zimmerman told Wheeler that she had been instructed by her bosses at Fox News to leave the false quotes in the story. Wigdor and Wheeler made up facts out of whole cloth. **If Wheeler was upset about purportedly fabricated quotes of a highly politically-charged nature being falsely attributed to him, why would he admit in a written statement on May 22, 2017 that Zimmerman's story was "essentially correct and worthy of further investigation"??? In truth, Wheeler admitted to FetchYourNews – on at least two public occasions on May 22, 2017 – that Zimmerman's article was on the money.**

and NPR. At Kathryn Murdock's request, and for political reasons, Fox pulled Zimmerman's article.

170. On May 23, 2017, Fox retracted the article with the following explanation:

"On May 16, a story was posted on the Fox News website on the investigation into the 2016 murder of DNC Staffer Seth Rich. The article was not initially subjected to the high degree of editorial scrutiny we require for all our reporting. Upon appropriate review, the article was found not to meet those standards and has since been removed.

We will continue to investigate this story and will provide updates as warranted."

[<http://www.foxnews.com/politics/2017/05/23/statement-on-coverage-seth-rich-murder-investigation.html>].

171. On June 5, 2017, Wheeler denied back-tracking on Fox and Zimmerman. He told the hosts of YouTube channel, *Crowdsourc The Truth*, that "I haven't walked back anything. As a matter of fact, in my statement that I released a week ago ... I said ... in writing that **I do believe that there was some communication between Seth and WikiLeaks and I believe that based on common sense**". (Emphasis added).³¹ [<https://www.youtube.com/watch?v=yDI0AFOHuNI>]. Wheeler also confirmed that he had hired an "attorney".

172. On June 19, 2017, Wheeler appeared on another YouTube channel, *Jamarl Thomas*, and tried to explain away his statements to Marraco. Wheeler stated:

³¹ This is the exact same thing that he said to Zimmerman and that she quoted in the May 16, 2017 Fox News story.

“what happened was the Fox 5 reporter, a woman named Marina Marroco, she reached out to me on that particular Monday ... So I had not read the actual report that was going to be released by the Fox News reporter on Tuesday, but I had heard there was going to be a report released.³² So the Fox 5 reporter asked could I give her a comment just a teaser, okay just teaser for the 10 o’clock news ... So she asked me and this is important she said so you have information from a source that they have seen emails from Seth Rich computer? And I said I think I said something yes, confirmed. Now what did I mean by that? I meant that it was confirmed by the Fox News reporter who had just told me about this guy, not that it was confirmed that I saw it with my own eyes. So I never really back tracked on anything. The reporter from Fox News who told me yes it’s confirmed that this guy that this guy saw the emails, okay and so basically what I did was repeated that but not once have I ever said I saw the computer.”

[<https://www.youtube.com/watch?v=er8PhSOk85s>]. Wheeler confirmed that his work for the Rich Family was “done”. Wheeler stated that he declined to keep working on the Seth Rich murder case because “my family and me has [sic] taken so much of a hit in the media over the past couple of weeks. To be honest, I’ve never had to deal with anything like this before. You know what I mean? ... It takes a toll on you, so I decided I really don’t even want to be involved in this case anymore.”

COUNT I – DEFAMATION

173. Butowsky restates paragraphs 1 through 172 of this Complaint and incorporates them herein by reference.

174. Folkenflik and NPR made and published to third-parties, including subscribers, viewers, listeners, followers, main stream media, and print media, numerous false factual statements, which are detailed verbatim above, of or concerning Butowsky.

175. By publishing Articles on the Internet and by tweeting his false statements, Folkenflik and NPR knew or should have known that their false and defamatory statements would be republished over and over by third-parties millions of

³² This is a patently false statement. As evidenced by the emails and text messages on May 15, 2017, Wheeler **had** read Zimmerman’s report.

times to Butowsky's detriment and injury. Republication by main stream media, print media and on social media was the natural and probable consequence of Folkenflik and NPR's actions and was actually and/or presumptively authorized by Folkenflik and NPR. In addition to their original publications, Folkenflik and NPR are liable for the millions upon millions of republications of the false and defamatory statements by third-parties.

176. Folkenflik and NPR's false statements constitute defamation *per se* or defamation *per quod*. The statements accuse and impute to Butowsky the commission of crimes involving moral turpitude (fraud) and for which Butowsky may be punished and imprisoned in a state or federal institution. The statements impute to Butowsky an unfitness to perform the duties of an office or employment for profit, or the want of integrity in the discharge of the duties of such office or employment. Folkenflik and NPR's statements also prejudice Butowsky in his profession or trade as a registered investor advisor. Folkenflik and NPR's statements caused Butowsky to suffer and incur both presumed and actual damages.

177. Folkenflik and NPR's false statements caused Butowsky to suffer loss and injury to his business, insult, pain, embarrassment, humiliation, and mental suffering, harm to Butowsky's name reputation, out-of-pocket loss and other actual damages.

178. Folkenflik and NPR acted with actual malice and reckless disregard for the truth for the following reasons:

- a. Folkenflik, NPR and its editors and publishers violated their own Code of Ethics and abandoned all journalistic standards in writing, editing and publishing the Articles at issue;

b. Acting in concert with Wigdor, Folkenflik and NPR conceived a story line in advance of any investigation and then consciously set out to make the evidence conform to the preconceived story. Folkenflik pursued and regurgitated the preconceived narrative that he knew to be false.

c. Folkenflik and NPR relied on a primary source – Wheeler – that Folkenflik and NPR knew to be wholly debunked and unreliable. Based on information known and available to Folkenflik, Folkenflik in fact harbored serious doubt as to the veracity of Wigdor and Wheeler’s statements about Butowsky. Indeed, the statements were knowingly false, with not a shred of supporting evidence, and Folkenflik knew that before he wrote the Articles published by NPR.

d. Folkenflik and NPR were in possession of Wheeler’s email communications and text messages with Zimmerman and other information that demonstrated the falsity of Wigdor and Wheeler’s information. Folkenflik consciously and intentionally ignored known and available contradictory evidence that demonstrated the preconceived thesis was false and deliberately failed to investigate sources of information (*e.g., Marraco, Hersh, etc.*) that contradicted the preconceived storyline.

e. Folkenflik and NPR knowingly presented half-truths wrapped in misstatements and conjecture. They repeated Wigdor and Wheeler’s words knowing that the words were false or inherently improbable and at a time when there were obvious reasons to doubt the veracity and credibility of both Wigdor and Wheeler. Folkenflik and NPR repeated Wigdor and Wheeler’s words at a

time when they were cognizant of the sources inconsistencies and credibility problems.

f. Folkenflik and NPR knew that Wigdor and Wheeler both had a strong motive to lie about Butowsky, and a motive to fabricate the charges conspiracy, collusion, fraud and “fake news”. Folkenflik and NPR never questioned the extreme bias of their sources. Rather, Folkenflik and NPR were guided by their own extreme bias, ill-will and desire to publish a salacious story about the President, Fox, fake news and “collusion”. Folkenflik’s book, prior articles, blogs and tweets about Fox and Rupert Murdoch further demonstrate that he and NPR was prejudiced against Fox and had an axe to grind. Butowsky was a victim of that actual malice.

g. Folkenflik and NPR chose to manufacture and publish false statements about Butowsky and use unnecessarily strong and violent language, disproportionate to the occasion, when they knew there was no evidentiary basis for the statements. Folkenflik and NPR did not act in good faith because, in the total absence of evidence, they could not have had an honest belief in the truth of their statements about Butowsky.

h. Folkenflik and NPR reiterated, repeated and continued to publish the false defamatory statements out of a desire to gain notoriety, increase revenues for NPR, hurt Butowsky and Fox and with reckless disregard for the consequences.

i. Folkenflik and NPR initiated the defamation, and went out of their way to publish extra-judicial statements about Butowsky.

179. Folkenflik and NPR lacked reasonable grounds for any belief in the truth of their statements and acted negligently in failing to determine the true facts.

180. As a direct result of Folkenflik and NPR's defamation, Butowsky suffered substantial presumed and actual damages and loss, including, but not limited to, pain and suffering, emotional distress and trauma, insult, anguish, stress and anxiety, public ridicule, humiliation, embarrassment, indignity, damage and injury to his personal and professional reputations, loss of business and income, attorney's fees, costs, and other out-of-pocket expenses in an amount to be determined by the Jury, but not less than \$57,000,000.00.

COUNT II – BUSINESS DISPARAGEMENT

181. Butowsky restates paragraphs 1 through 180 of this Complaint and incorporates them herein by reference.

182. Folkenflik and NPR published false and disparaging information about Butowsky, which is detailed verbatim above.

183. Folkenflik and NPR knew their statements were false and acted with the specific intent to injure Butowsky and aid and abet the extortion money from Fox.

184. None of Folkenflik and NPR's statements are privileged. Folkenflik and NPR had no right to publish false and disparaging information about Butowsky. Folkenflik and NPR knew of the falsity of their statements and acted with wanton, intentional and reckless disregard concerning publication. Folkenflik and NPR acted with ill-will and they intended to interfere with the economic interests of Butowsky in an unprivileged fashion.

185. Folkenflik and NPR's statements and actions constitute business disparagement under Texas law.

186. Folkenflik and NPR's business disparagement caused Butowsky to suffer and incur special damages, including loss of income and business and out-of-pocket expenses in an amount to be determined by the Jury, but not less than \$57,000,000.00.

COUNT III- CIVIL CONSPIRACY

187. Butowsky restates paragraphs 1 through 186 of this Complaint and incorporate them herein by reference.

188. Beginning in July 2017 and continuing through the present, Folkenflik combined, associated, agreed or acted in concert with Wigdor for the express purpose of injuring Butowsky in his business and reputation as a Dallas investment advisor through the publication and republication of false and defamatory statements. In furtherance of the conspiracy and preconceived joint plan, Folkenflik and Wigdor orchestrated a scheme the unlawful purpose of which was to defame Butowsky and destroy his name and reputation. Acting in concert, Folkenflik and Wigdor utilized the various main stream media outlets, professional and personal friendships and social media properties to publish, republish and spread the defamation and character assassination.

189. In conjunction with Folkenflik and NPR's defamatory attacks on Butowsky and in furtherance of the conspiracy, Wigdor launched his own wehrmacht and published numerous false and defamatory statements about Butowsky, including the following:

a. On August 1, 2017, after setting Folkenflik lose, Wigdor cranked up his own public relations wehrmacht, and began a blitzkrieg of defamation in main

stream media, all of which was televised and broadcast in Texas. Wigdor first contacted MSNBC and scheduled an interview with Ari Melber (“Melber”). [\[https://www.youtube.com/watch?v=VFTdWAWrocQ\]](https://www.youtube.com/watch?v=VFTdWAWrocQ). In addition to the millions of people who, upon information and belief, watched the MSNBC interview live, Melber republished the interview to his **38,262 Twitter followers** and to MSNBC’s **1,975,316 Twitter followers**:



During the interview with Melber, Wheeler made the following statements:

“That’s right well I was asked to get involved in conducting an investigation, a murder investigation of Seth Rich and that why I got involved, so I could try and find out who killed this guy. During the course of my investigation, there was a lot of things that came up uh there was a lot of suspicious information that I was learning about possibly the DNC being involved to some degree, I don’t know. What I decided to do was to take all my information and give it to the police department like you should do in any case and go from there. But halfway through the investigation and up the point this article was released by Fox, there were these quotes in there from me supposedly saying that I knew for a fact that Seth Rich the decedent had been in contact with WikiLeaks emailing them emails, that was not true.

...

I think uh well I know for a fact Ed Butowsky, who was the individual that was funding the investigation, he had been in contact with people from the White House and he was the one that was pushing this Russian hacking narrative, by the way that I didn’t know a whole lot about because I wasn’t you know trying to debunk a narrative or support a narrative I was trying to find a murderer.

I do know that, and Ed even admitted it himself. And I think the bottom line from all of this, Ari, is the reporter herself from Fox News she even admitted it that she lied and put those quotes in there. I mean she admitted that but at the same time to this day they have not retracted that as a result of those quotes and her story it's then damaged my credibility and my integrity."

When asked about Butowsky's May 14, 2017 text, Wheeler stated:

"Well first of all, I'm thinking why would the President have to review a story pertaining to a death, to the murder of a guy in DC, why would the President even be involved in this, but at that point, Ari, it was rather obvious to me that they actually lured me into this investigation.³³ They meaning this Fox News reporter and Ed Butowsky to substantiate this Russian narrative thing or to debunk that when in fact they told me that I was really getting involved just to solve a murder. All I want them to do is to correct the record, to tell the truth."

Wigdor represented to Melber that "discovery" would reveal **"the emails and the texts the phone calls or the visits to the White House between Ed Butowsky and President Trump and other people in the White House"**. Wigdor knew these statements were false. He had no good faith basis to believe he was going to see emails, or texts or phone calls between Butowsky and President Trump – because none exist. These scandalous statements made to main stream media were solely intended to fuel the media frenzy created and stirred by Wigdor and Folkenflik.

b. On August 2, 2017, Wigdor appeared on CNN with Wolf Blitzer, where he published the following false and defamatory statements about Butowsky:

³³ Wheeler's statements to Melber are revealing. Wheeler clearly did not believe the President was involved in anything. And, if Wheeler knew "at that point" – May 14, 2017 – that he had been "lured into this investigation", *why did Wheeler continue to communicate with Zimmerman on May 15, 2017?* Wheeler did not tell *anyone* he was "lured" into *anything* until *after* publication of Zimmerman's article on May 16, 2017 and *after* Wheeler was threatened with litigation by the Rich family and Bauman.

“I watched that interview last evening with your colleague, Chris Coumo, and it was actually highly entertaining because much of what he [Butowsky] said made absolutely no sense. You know take for instance the text message that he sent to Rod Wheeler. He said that the President read the article. He wanted it out immediately and now he’s trying to say that text was somehow a joke. I mean this was not a laughing matter. This was a text message. There was no emoji at the end of it. There was no smiley face. It wasn’t a joke. Ed Butowsky, as he said in texts, was in conversations with the White House, with the President.”

[<https://www.youtube.com/watch?v=S2BafRHuZY>]. Wigdor’s entire narrative regarding Butowsky’s connection to the White House, particularly the President, is knowingly false. Butowsky has never spoken to the President, nor has he claimed to have ever spoken to the President. Wheeler told Wigdor that there was no evidence of any connection between Butowsky and the President. Wigdor intentionally disregarded Wheeler’s advice, failed to conduct any investigation, failed to interview a single person, and even disregarded Spicer’s statements to Folkenflik that he (Spicer) was not aware of any contact between Butowsky and the President. It is axiomatic and obvious that “collusion”, *i.e. between Butowsky and the President or between the Trump Administration and the “Russians”*, cannot occur if the people have never met or communicated. “Collusion”, by definition, requires cooperation or agreement to act in concert. The suggestion that the President of the United States would have colluded with Butowsky – a person unknown to the President and with whom the President has never communicated – is preposterous. Wigdor, like Folkenflik, knew that the representations were false. Wigdor and Folkenflik shamelessly republished the obviously fake news. In his interview with CNN, Wigdor repeated the misrepresentation published by Folkenflik in the First Folkenflik Article:

“What he [Wheeler] was hired to do was to do an investigation into the murder of Seth Rich, he wanted to do that, unfortunately he was used as a pawn in this case by Ed Butowsky and Fox News, he was used as a pawn again to steer away the narrative and that’s all documented not only in text messages, but also in voice recordings, the case is strong and not only were the statements made in the May 16 article false but you also have Ed Butowsky and Malia Zimmerman admitting those quotations were false.”

(Emphasis added to highlight the false statements). The CNN/Wolf Blitzer interview was viewed live by hundreds of thousands of people, perhaps millions world-wide. It was uploaded to YouTube by Wigdor and viewed at least 228 more times.

c. On August 3, 2017, Wigdor partner Jeanne Christensen appeared with Wheeler on CNN with Chris Cuomo (“Cuomo”). [\[https://www.youtube.com/watch?v=d5L-NF6cDOo\]](https://www.youtube.com/watch?v=d5L-NF6cDOo). Wheeler published the following false and defamatory statements about Butowsky:

“WHEELER: I really tried hard to find a murderer not to debunk a Russian narrative ... And while I was in the process of trying to find that murderer behind the scenes what I did not know is that this reporter and this rich guy, Ed Butowsky, had another plan in mind and that’s why they brought me into this thing and I realize that now.

...

As far as I’m concerned, this man [Butowsky] knew he was lying. He’s been lying the entire time.

...

We had this meeting [with Sean Spicer on April 20, 2017]. We met for about 10 -15 minutes and I’ll tell you real quickly how the meeting ended: Sean Spicer said, ‘I’m not sure how I can help with this investigation’. He said, ‘Rod if you want to talk some more about this or maybe if you want me to put you in touch with somebody at the Justice Department’. He gave me his business card ... He also gave me his personal cell phone number ... This is what he gave me, and he said if you need some more help give me a call. I’ve never called Sean Spicer after that, but that’s the truth and that’s what happened.

CUOMO: ... This is not the court of public opinion. In a court of law you only know what you show and you're going to have to demonstrate that Sean Spicer, if you're going to include the White House in a concocted story scheme, then you're going to have to show that they knew something about it and that they wanted to advance it and there is some merit to this suggestion the President of the United States had seen this article and wanted it advanced, do you have any proof to do any of that?

CHRISTENSEN: We just filed a lawsuit as you know on the first [of August] and ... the defendants are entitled to answer and then we will proceed to discovery and we will obtain that information that we believe is out there and will prove Rod's story."

Wheeler's own words prove that the White House did not know and was not involved any scheme to publish "fake news". Christensen's words demonstrate that Wigdor published false statements without evidentiary support. The false accusation of collusion with the President, Spicer, Bannon, Flores, etc., was invented out of whole cloth. Wigdor republished the Christensen/Wheeler interview to Wigdor's Twitter followers:



d. On August 3, 2017, Wigdor wrote an eight-page letter to British regulators (Ofcom), in which he repeated the false and defamatory statements about Butowsky. [See <https://www.thedailybeast.com/fox-news-fake-news-could-doom-rupert->

[murdochs-dream](#)]. Wigdor's letter to Ofcom, *inter alia*, states that "Butowsky's representations suggest something more than 'low' broadcasting standards. His claims suggest a failure to adhere to any standards. Fox must account for this failure and demonstrate why the public should have confidence in its commitment to broadcasting standards."

e. On Tuesday, August 8, 2017, the New York Times published an expose entitled, "Fox Is Said to Have Declined to Settle Suits for \$60 Million".

<https://www.nytimes.com/2017/08/08/business/media/fox-is-said-to-have-declined-to-settle-suits-for-60-million.html>]. The article describes Wigdor's motive for defaming Butowsky. The New York Times reported that:

"At a confidential mediation proceeding in late July [2017]³⁴, the lawyer Douglas H. Wigdor asked for more than \$60 million to settle several disputes with Fox News and 21st Century Fox, according to two people familiar with the matter. Mr. Wigdor proposed that the settlement be paid in a lump sum, giving him the discretion to distribute the payments, according to one of the people.

Those cases included gender and racial-discrimination lawsuits against the company that Mr. Wigdor had filed on behalf of more than 20 current and former employees in the last several months and at least one explosive complaint that had not yet been made public.

The company would not accept Mr. Wigdor's offer and no resolution was reached, said the people, who requested anonymity to discuss a confidential matter. Mr. Wigdor's proposal to settle the disparate cases all together is considered unusual, as it is rare that there are multiple suits with the same lawyer against the same party. Also, cases typically vary greatly in their merit, making them difficult to value as a group.

³⁴ It was at this mediation proceeding in July 2017 that Wigdor published the unprivileged draft complaint containing false and defamatory statements about Butowsky. Wigdor published the statements in an attempt to extort a settlement of the Wigdor Discrimination Suits.

After mediation failed, Mr. Wigdor went public last week with that explosive case, filing a defamation and racial-discrimination lawsuit against 21st Century Fox and Fox News that focused on an article about the death of Seth Rich, a young aide for the Democratic National Committee. The suit included accusations that the White House and a wealthy Trump supporter pushed Fox News to publish an article on its website as part of a scheme to end speculation about the president's ties to Russia. Mr. Wigdor brought the suit on behalf of Rod Wheeler, a private detective involved in the case who said that Fox News had fabricated quotations from him in the article. Fox News, which later retracted the article, has denied the claims."

f. On September 19, 2017, Wigdor spoke with CNN Media's Oliver Darcy ("Darcy"). [<http://money.cnn.com/2017/09/19/media/fox-news-court-dismiss-lawsuit-seth-rich/index.html>]. Wigdor made the following false and defamatory statements to Darcy:

"We are confident that our client will ultimately be vindicated in a public court of law that will expose how Fox and the individually named defendants created fake news in an attempt at diverting attention away from the Russian hacking scandal."

g. On September 22, 2017, the New York Times published an article about Wigdor's war against Fox entitled, "Leading the Legal War Against Fox". [<https://www.nytimes.com/2017/09/22/nyregion/douglas-wigdor-fox-news.html>]. Wigdor did not conceal his feelings for Fox: "My view of 21st Century Fox and Fox News is that from top to bottom there is a systemic culture of not only discriminating against people based on their gender and color, but also of retaliating against them when they stand up to voice complaints," he told the New York Times, reaffirming the harsh assessment of Fox. "Am I at war with Fox?" Wigdor added, repeating a question he was asked. "Yeah, I guess I am."

h. On September 22, 2017, Bloomberg Businessweek published an article entitled, "The Trump-Loving Lawyer Who Won't Stop Suing Fox News". [<https://www.bloomberg.com/news/features/2017-09-22/the-trump-loving-lawyer-who->

[won-t-stop-suing-fox-news](#)]. The Bloomberg article captured Wigdor's malice and disdain for "19th Century Fox". Wigdor told Bloomberg Businessweek that "[w]hen we write our complaints, there's an effort on our part to make it as colorful as possible. We're writing in a way that puts the company on its heels. Because we know that these companies have multimillion [dollar] marketing resources. Now we're suing this company and trying to change the public perception." Wigdor told Bloomberg that part of his "press strategy" was to go "on the TV news circuit. Sometimes he stages press conferences. Often he grants in-depth access to a single reporter from a prominent news outlet, on the condition that the story be embargoed until the day a suit is filed, when it can be set off like a firecracker."³⁵

i. On October 23, 2017, Wigdor appeared on CNBC's Closing Bell.

[\[https://www.youtube.com/watch?v=KgmfpGdgaTg\]](https://www.youtube.com/watch?v=KgmfpGdgaTg). The following exchange took place concerning Fox's bid to acquire Sky:

CNBC ANCHOR: I'm curious why you would be called to testify in this particular case. This is about them being able to buy another company and whether or not they are fit to buy that company. You're suing them. Of course, you are going to say they are not fit. You have an axe to grind here.

WIGDOR: That's a good question. I'm glad you asked it actually because what they are trying to determine is whether Fox should purchase Sky, the Foxification of Sky. Whether they meet broadcasting standards, whether or not they are fit and proper. Believe it or not I have not told the competitions and market authority what they should or should not do. I have not made any recommendations, but I feel obligated that I have a lot of information. I have 22 clients and I believe in transparency ... I'm giving them information. They can do with that what they feel appropriate.

...

³⁵ Consistent with his business model, Wigdor used Folkenflik as rocket fuel to ignite a main stream media feeding frenzy. Wigdor's "press strategy" was to put Fox on its heels in order to extort a settlement in the face of all the bad press.

CNBC ANCHOR: I'm coming off cynical here, but another part of me thinks, okay, you're doing this to gain leverage with the company because you're in negotiations with them. You can use this as leverage with them, to get a better settlement, maybe you don't go [to England] the second time if you get decent settlements for your 22 clients.

WIGDOR: I'm just trying to represent my clients zealously under the, under the auspices of the law. I've never tried to use this in my negotiations with them ... I represent Rod Wheeler in the Seth Rich murder fake news case. I mean that goes to the very heart of broadcasting standards, and whether the British people want the Foxification of Sky is a serious issue for them to consider."

j. Wigdor used his Twitter account, @WigdorLaw, to simultaneously republish to a new target audience – **Wigdor's 421 Twitter followers** – virtually every false and defamatory statement Wigdor ever made to main stream media and print media. [https://twitter.com/WigdorLaw?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor]. Wigdor also republished every television interview given on and after August 1, 2017. Wigdor also retweeted and republished articles that contained false and defamatory statements about Butowsky. [https://www.thedailybeast.com/trump-told-fox-news-to-publish-seth-rich-murder-hoax-lawsuit-claims?via=twitter_page].

k. In addition to Folkenflik, Twitter and Facebook, Wigdor used his own website to promote and republish false and defamatory statements about Butowsky. [<https://www.wigdorlaw.com/wheeler-case-involving-fox-news-trump-administration-seth-rich/>]. Wigdor's website republishes multiple false and defamatory statements about Butowsky, including the following oft-repeated quote:

"Rod Wheeler unfortunately was used as a pawn by Ed Butowsky, Fox News and the Trump administration to try and steer away the attention that was being given about the Russian hacking of the DNC e-mails."

Wigdor's infamous quote, repeated by Folkenflik and hundreds of times by third-parties in articles, blogs, tweets and posts throughout the Internet, has been republished

numerous times in the past year, including by Newsweek on March 29, 2018 in the following online article:



190. Folkenflik and Wigdor, in furtherance of the conspiracy, acted intentionally, purposefully, without lawful justification, and with the express knowledge that they were injuring Butowsky.

191. Folkenflik's joint actions with Wigdor constitute a civil conspiracy under Texas law.

192. Folkenflik and NPR are liable for both *their* acts of defamation committed in furtherance of and during the course of the conspiracy *and* the defamatory statements published by Wigdor.

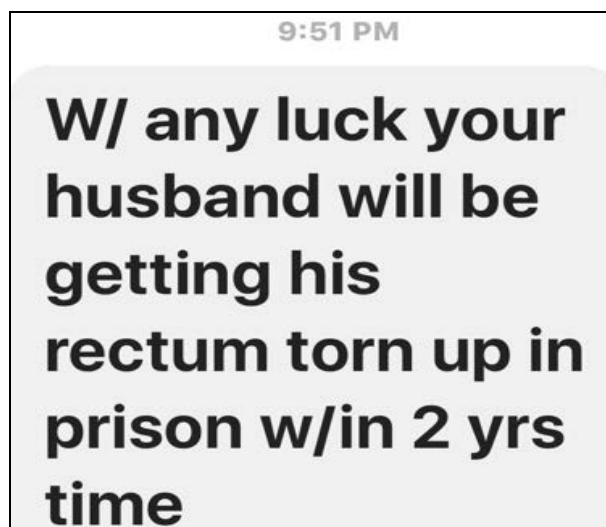
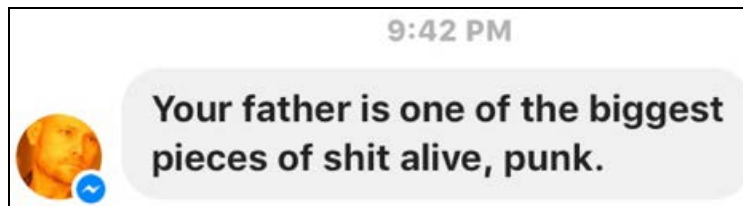
193. As a direct result of Folkenflik's misconduct, Butowsky suffered actual damages and loss, including, but not limited to, injury to and loss of business, injury to his reputation, insult, pain, humiliation, embarrassment, mental suffering, attorney's fees, court costs, and other damages in an amount to be determined by the Jury, but not less than \$57,000,000.00.

194. Butowsky has received death threats to his family, damage to his home in Plano, and thousands of *ad hominem* attacks. The ugly effect and impact of Folkenflik

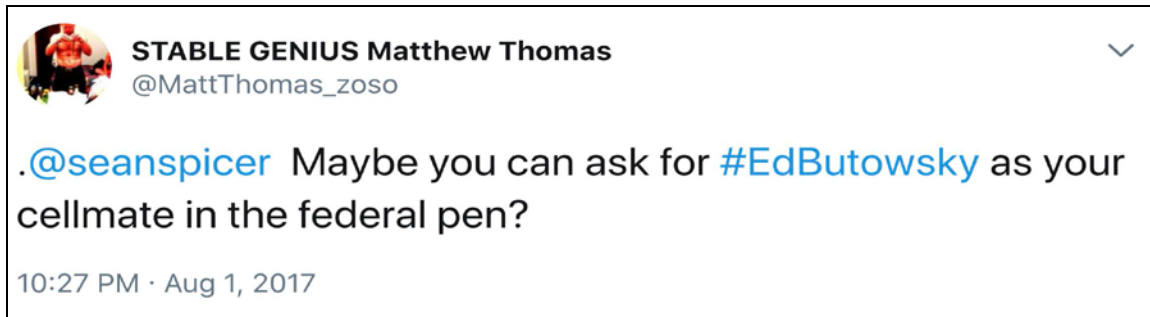
and Wigdor's collusive arrangement is captured by the following Facebook post by Butowsky's daughter, Lauren:

I will never forget going on twitter, seeing messages calling for mine and my brother's murders because "that's what Ed deserves." I will never forget people harassing my mother, brother, myself, and my grandparents for no other reason than we were related to Ed. I will never forget seeing a man tweet at my company telling them they should be ashamed to have hired me. I will never forget people tweeting pictures of my brother identifying him as Ed's son. I will never forget being so afraid for the safety of my family because of the inundation of death threats.

As a direct result of Folkenflik and Wigdor's publications, Butowsky and his family were attacked mercilessly on social media. "Matt Thomas" sent the following messages to Butowsky's wife and son via Facebook:



"MattThomas_zoso" tweeted the following:



Other tweets were far worse. The defamation devastated Butowsky.

Butowsky alleges the foregoing based upon personal knowledge, public statements of others, and records in his possession. Butowsky believes that substantial additional evidentiary support, which is in the exclusive possession of Folkenflik, NPR, their sources, Wigdor and Wheeler, and their agents and other third-parties, will exist for the allegations and claims set forth above after a reasonable opportunity for discovery.

Butowsky reserves the right to amend this Complaint upon discovery of additional instances of Folkenflik and NPR's defamation and wrongdoing.

CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, Ed Butowsky respectfully requests the Court to enter Judgment against Folkenflik and NPR, jointly and severally, as follows:

- A. Compensatory damages in an amount to be determined by the Jury, but not less than \$57,000,000.00;
- B. Punitive damages in the maximum amount allowed by Texas law;
- C. Prejudgment interest on the principal sum awarded to Plaintiff by the Jury from August 1, 2017 to the date of Judgment at the maximum rate allowed by law;
- D. Postjudgment interest at the maximum rate allowed by Texas law;
- E. Costs and such other relief as is just and proper.

TRIAL BY JURY IS DEMANDED

DATED: March 5, 2019

ED BUTOWSKY,
In his Individual and Professional Capacities

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CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2019 a copy of the foregoing was filed electronically using the Court's CM/ECF system, which will send notice of electronic filing to counsel for Defendants and all interested parties receiving notices via CM/ECF, and a copy was also emailed in PDF to counsel for the Defendants: Laura.Prather@haynesboone.com; Thomas.Williams@haynesboone.com.

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